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a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff

Ada Aulet
Leti Benavides
Dana Blanton
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Diana Muniz

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order

RP 52

Relating to the creation of the Texas Tax Reform Commission to accept public input on and recommend changes to the tax structure.

WHEREAS, providing tax reform and property tax relief are essential to promoting long-term economic growth and ensuring a stable, long-term source of revenue for public schools; and

WHEREAS, the current tax system fails to provide a level playing field for employers and is overly reliant on property taxes, thereby creating a significant barrier to homeownership and business expansion; and

WHEREAS, reforms are needed to bring greater fairness to the tax code and tax collection system, permanently lower the property tax burden for all taxpayers and ensure public schools have a reliable revenue source; and

WHEREAS, the public should have the opportunity to provide input and comments on these important issues;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Creation of Advisory Commission. The Texas Tax Reform Commission ("Commission") is hereby created to examine relevant issues and make recommendations for changes to the tax structure to fund schools and to reduce property taxes.

Composition. The Commission shall consist of Commissioners appointed by the Governor to serve at the pleasure of the Governor. The Governor may designate a member of the Commission to serve as chair of the Commission.

Advisory Councils and Agency Support. As the Commission deems necessary to carry out its duties, the Commission may appoint subcommittees. The Office of the Governor and other state agencies may provide staff to assist the Commission as necessary.

Recommendations and Report. The Commission shall develop recommendations to modernize the current tax structure, reduce property taxes, and provide a long-term, stable source of revenue for public schools.

The Commission shall submit a full report, including findings and legislative recommendations, to the Governor, Lieutenant Governor, and Speaker of the House of Representatives. Subsequent work of the Commission may be addressed in supplementary reports as appropriate.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms. Unless extended, this order shall expire on September 1, 2007.

Given under my hand this the 21st day of November, 2005.

Rick Perry, Governor

TRD-200505479

Proclamation 41-3030

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the Spade Independent School District, the Olton Independent School District, and the Commissioner of the Texas Education Agency have requested that I exercise executive authority to grant an emergency exception to the uniform election date requirements pursuant to Sections 41.001 and 41.0011, Texas Election Code, and grant a request for a special election on February 4, 2006, on the issue of the consolidation of the two school districts pursuant to Chapter 13 of the Texas Education Code; and

WHEREAS, Spade Independent School District has stated it will not have sufficient revenue to conduct classes during the 2006-2007 school year due to significant drops in student enrollment; and

WHEREAS, the next available uniform election date is May 13, 2006, which is after the statutory deadline for contract teachers to be notified of their contract status for the 2006-2007 school year; and

WHEREAS, if the election were not held until the May 13, 2006 uniform date and either school district were to reject the consolidation, Spade Independent School District would not have sufficient time to explore other educational options for its citizens and students; and

WHEREAS, the Texas uniform election dates law is intended to serve the interests of voters by allowing consolidation of elections onto a limited number of uniform dates, but the special circumstances as expressed by both Spade and Olton Independent School Districts and the Commissioner of the Education Agency suggest that the interests of voters would be better served in this unique case by permitting an earlier election on a non-uniform date; and

WHEREAS, the governor of Texas is granted the discretion under Section 41.0011, Election Code, to declare an emergency warranting holding a special election before the appropriate uniform election date;

NOW THEREFORE I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Laws of the State of Texas, do hereby declare that the foregoing circumstances constitute an emergency and, accordingly, I grant permission for the Spade Independent School District and Olton Independent School District to conduct a special election on February 4, 2006, for voting for or against the sole proposition of consolidating the two school districts.

I also direct Spade and Olton Independent School Districts to seek pre-clearance from the United States Department of Justice as required by law.

Should the two districts choose to exercise their authority to call an election pursuant to this proclamation, said election may be held on February 4, 2006, in accordance with law.

A copy of this order shall be mailed immediately to the superintendents of the Spade and Olton Independent School Districts.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505473



Proclamation 41-3031

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of New Jersey performs background checks pursuant to N.J. Stat. Ann. § 2C:58-4 and that those checks meet the requirements of Tex. Gov't Code § 411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid permit to carry a handgun from the State of New Jersey;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid permit to carry a handgun issued by the State of New Jersey as long as New Jersey permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505474



Proclamation 41-3032

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of Massachusetts performs background checks pursuant to Mass. Gen. L. ch. 140, § 131 and that those checks meet the requirements of Tex. Gov't Code § 411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid license to carry a firearm from the State of Massachusetts;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid license to carry a firearm issued by the State of Massachusetts as long as Massachusetts permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505475



Proclamation 41-3033

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of Maryland performs background checks pursuant to Md. Pub. Safety Code §5-305 and that those checks meet the requirements of Tex. Gov't Code §411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid license to carry a handgun from the State of Maryland;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid license to carry a handgun issued by the State of Maryland as long as Maryland permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State
TRD-200505476

Proclamation 41-3034

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of California performs background checks pursuant to Cal. Penal Code § 12052 and that those checks meet the requirements of Tex. Gov't Code § 411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid license to carry a handgun from the State of California;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid license to carry a handgun issued by the State of California as long as California permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State
TRD-200505477

Proclamation 41-3035

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated by state or local authorities or an agent of the state or local authorities before the license is issued; and

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas defines "background check" as a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation; and

WHEREAS, the governor has received a statement of finding from the attorney general that the State of Washington performs background checks pursuant to Wash. Rev. Code § 9.41.070 and that those checks meet the requirements of Tex. Gov't Code § 411.173(b); and

WHEREAS, the State of Texas is therefore authorized to recognize a valid license to carry a concealed pistol from the State of Washington;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to a valid license to carry a concealed pistol issued by the State of Washington as long as Washington permit holders comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State
TRD-200505478

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0377

The Honorable Ken Armbrister

Chair, Committee on Natural Resources

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a school board trustee may vote to appoint himself to fill a board vacancy created by the resignation of another trustee (RQ-0350-GA)

SUMMARY

The self-appointment aspect of the common-law doctrine of incompatibility voids the appointment of a sitting school board trustee by a vote of the school board to fill a vacancy on the board created by the resignation of another trustee.

Opinion No. GA-0378

Ms. Sherri Sanders

Interim Executive Director

State Board of Dental Examiners

333 Guadalupe, Tower 3, Suite 800

Austin, Texas 78701-3942

Re: Construction and constitutionality of a rider to the 2006-07 biennial year appropriation to the State Board of Dental Examiners (RQ-0351-GA)

SUMMARY

To the extent that a rider to the 2006-07 appropriation to the State Board of Dental Examiners purports to require competitive bidding on the agency's contracts which are valued at less than \$5,000, the rider attempts to amend section 2155.132(e) of the Government Code and thus

contravenes article III, section 35 of the Texas Constitution. To the extent that other provisions of the rider are merely declarative of the general law regarding competitive bidding, they are valid. To the extent that they conflict with or supplement general law, they are invalid.

Opinion No. GA-0379

Mr. Wayne Thorburn, Administrator

Texas Real Estate Commission

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether the Texas Real Estate Inspector Committee and its subcommittees may conduct meetings by telephone conference call pursuant to section 551.125(b)(3) of the Government Code (RQ-0349-GA)

SUMMARY

Chapter 1102 of the Occupations Code creates the Texas Real Estate Inspector Committee to assist the Texas Real Estate Commission and provides that the Committee is subject to the Open Meetings Act. However, chapter 1102 does not expressly limit the Committee to exercising advisory duties and expressly authorizes the Committee to perform any duties delegated by the Commission. As a result, the Committee is not an advisory board under section 551.125(b)(3) of the Government Code and the Committee and its subcommittees may meet by telephone conference call only under section 551.125(b)(1)-(2).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200505520

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: November 29, 2005

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.301

The Texas Lottery Commission (Commission) proposes an amendment to Title 16, Part 9, Chapter 401, §401.301, relating to General Definitions. The purpose of the proposed amendment is to delete unnecessary provisions, clarify certain definitions, and define new terms.

Kathy Pyka, Controller, has determined there will be no significant fiscal impact for state or local government as a result of the amendment of §401.301. Any costs to the state could be absorbed by current resources. For each year of the first five years the amendment is in effect, the fiscal impact is the following: FY 05, \$0; FY 06, \$0; FY 07, \$0; FY 08, \$0; FY 09, \$0. Additionally, there will be no effect on individuals, small businesses, micro businesses or local or state employment.

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the amendment as proposed is in effect, the public will benefit from the adoption because unnecessary definitions will be deleted, existing definitions will be clarified, and new terms will be defined.

Comments on the proposed amendment may be submitted to Sarah Woelk, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The Commission will hold a public hearing on this proposal at 10:00 a.m. on December 19, 2005. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed pursuant to Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery.

Government Code, Chapter 466 is affected by the proposed amendment.

§401.301. General Definitions [Definition].

The following words and terms, when used in this subchapter [chapter], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Caption--Letters [The letters] appearing below [the] play symbols in the play area of a game that verify the correctness of the play symbols.

(2) Commission--The Texas Lottery Commission.

[(2) Certified drawing--A drawing in which the lottery drawing supervisor, security representative, and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.]

[(3) Claim center--A claims office of the commission at which a claimant may claim a prize.]

[(4) Claim form--The printed form authorized and provided by the commission that a claimant shall complete and submit to the commission when claiming a prize.]

[(5) Claimant--A player who has submitted a valid claim for payment within the required time frame.]

[(6) Current draw period--The period of time in which the player selections and Quick Pick selections are accumulated into a pool of plays eligible for winning in a drawing held at the end of the designated period.]

[(7) Director--A director of the Texas Lottery Commission.]

[(8) Direct prize category contribution--A specified percentage of net sales allocated to the prize categories as described in the rules of the specific game being played.]

[(9) Division--A division of the Texas Lottery Commission.]

(3) [(40)] Draw break--A [The] period of time during which tickets in a specific game may not [on a draw day when tickets cannot] be sold, produced[, or validated by a [on an on-line] terminal [for the specific game(s) being drawn].

(4) [(41)] Drawing--The process [procedure] by which the commission makes random selections that determine winners, if any, in a game. [randomly selects winning combinations of digits, numbers, or symbols in accordance with the rules of the game as set forth in the rules of the specific game being played and the drawing procedures for the specific game.]

[(12) Drawing pool--The amount of money available for all prize categories for a specific drawing.]

[(13) Draw procedures--The written document approved by the executive director that specifies the draw procedures for a particular game, if a drawing is designed as part of the game.]

(5) [(44)] Duplicate ticket--A ticket produced by photograph, xerography, or any other method other than generation [a ticket generated] by a [an on-line] terminal.

(6) [(45)] Executive director--The executive director of the Texas Lottery Commission.

(7) [(16)] Game number--A [The] number on the back of an [the] instant ticket that identifies a particular instant game. [which refers to the number associated with the particular instant game.]

[(17) Game procedures--The written document approved by the director of the marketing division of the commission that includes, among other things, the game name, how a prize is won, game prize structure, playstyle, and eligibility for a drawing, if any.]

(8) [(18)] High-tier prize--A prize of \$600 or more.

[(19) Indirect prize category contribution--Amounts allocated from the prize reserve fund, roll-over and prize breakage for a specific online game drawing.]

(9) [(20)] Instant game--A game in which winners are not determined by a drawing. [An instant ticket lottery game, developed and offered for sale to the public in accordance with commission rules, that is played by removing the latex covered play area on an instant ticket to reveal the ticket play symbols.]

[(21) Instant retailer--A commission retailer authorized by the commission to sell instant tickets only.]

(10) [(22)] Invalid ticket--A [Any] ticket that fails to meet commission validation requirements. [all validation requirements of the commission.]

[(23) Lottery retailer or retailer--A sales agent, as contemplated by Chapter 466, Government Code.]

(11) [(24)] Low-tier prize--A prize of less than \$25.

(12) Matrix--A combination or range of symbols or numbers used in an on-line game and the type and number of selections that constitute a single play in the game.

(13) [(25)] Mid-tier prize--A prize of \$25 or more but less than \$600.

[(26) Minor--An individual younger than 18 years of age.]

(14) [(27)] On-line game--A [lottery] game that uses an electronic system to administer plays and involves a drawing to determine winners. [which utilizes a computer system to administer plays, the type of game, and amount of play for a specified drawing date, and in which a player either selects a combination of numbers or allows number selection by a random number generator operated by the computer, referred to as Quick Pick. The commission will conduct a drawing to determine the winning combination(s) in accordance with the rules of the specific game being played and the drawing procedures for the specific game.]

[(28) On-line retailer--A lottery retailer authorized by the commission to sell on-line tickets. On-line retailers shall sell all on-line lottery games and at least two instant ticket games offered by the commission.]

(15) [(29)] On-line system--The commission or commission[commission's] vendor's on-line computer system consisting of [on-line] terminals, central processing equipment, and a communication network.

[(30) On-line terminal--The commission or commission's vendor's computer hardware through which an on-line retailer enters player selections or Quick Pick selections and by which on-line tickets are generated and claims are validated.]

[(31) On-line ticket--A computer-generated ticket issued to a player, by an on-line retailer, as a receipt for the combination of numbers a player has selected, and generated on an on-line terminal provided by the commission or commission's vendor on official Texas

Lottery paper stock, by either selecting his or her own numbers or selecting Quick Pick, which is a random number generator operated by the computer. That ticket shall be the only acceptable evidence of the combination of digits, numbers, or symbols selected. On-line tickets may be purchased only from on-line retailers.]

(16) [(32)] Pack number--A [The unique] number on the back of an [the] instant ticket that designates the number of the pack within a specific instant game.

(17) Play--The selection of symbols for an opportunity to win in an on-line game and the purchase of a ticket evidencing that selection.

(18) [(33)] Play area--The [latex-covered] area of a [an instant] ticket that [when removed,] reveals [the ticket] play symbols when uncovered.

(19) [(34)] Playstyle--The method of play to determine a winner in a game. [for an individual game.]

(20) Play symbols--Symbols on a ticket that are used to determine eligibility for a prize.

[(35) Play symbol-- The printed data under the latex on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.]

[(36) Preliminary drawing--An event in which entries received by a specific deadline are utilized for the selection of contestants for a promotional drawing.]

[(37) Present at the terminal--A player remains physically present at the on-line terminal from the time the player's order for the purchase of on-line lottery tickets is paid for and accepted by the lottery on-line retailer until the processing of the order is completed and the tickets are delivered to the player at the licensed on-line retailer terminal location.]

[(38) Prize amounts--The amount of money payable to each share in a prize category; the annuitized future value of each share in a prize category; or the net present cash value of each share in a prize category for each on-line game drawing. Prize amounts are calculated by dividing the prize category contribution, the annuitized future value of the prize category contribution, or the net present cash value of the prize category contribution by the number of shares determined for the prize category.]

[(39) Prize breakage--The money which is left over from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the amount needed to pay a prize.]

[(40) Prize category--The matching combinations of numbers and their corresponding prize levels as described in rules for the specific game being played.]

[(41) Prize category contributions--Refers to contributions for each drawing to each prize category including direct and indirect prize category contributions.]

[(42) Prize fund--The monies allocated to be returned to players in winning tickets within a specific instant game.]

[(43) Prize pool--The total amount of money available for prizes as a percentage of the total sales for the current draw period.]

(21) [(44)] Prize structure--The number, categories, and value of prizes and the pay-out percentage and odds of winning prizes in a particular game. For an instant game, the prize structure includes the number of tickets in a game. [value, prize pay out percentage,

and odds of winning prizes for an individual game as approved by the executive director.]

[(45) Promotion—An event coordinated or conducted by the Texas Lottery Commission at retail sites, fairs, festivals and appropriate venues to educate players about Lottery products and/or sell Lottery games through a licensed Lottery retailer in specific markets to maximize Lottery sales and statewide awareness.]

[(46) Promotional drawing—A drawing in which qualified contestants are awarded prizes in a random manner in accordance with the procedures set forth for a specific promotional event.]

(22) [(47)] Quick Pick—A play option in which selections are generated electronically by the on-line system. [that generates random numbers by the computer.]

(23) Retailer—A sales agent, as defined by Chapter 466, Government Code.

[(48) Roll-over—The amount in a specific prize pool category resulting from no matching combinations and/or prize breakage from the previous drawing.]

[(49) Sales agent—A person licensed under the State Lottery Act to sell tickets.]

[(50) Shares—The total number of matching combinations within each prize category as determined for each drawing.]

(24) [(51)] Sign-on slip—A [The] receipt produced by a [the on-line] terminal when a [the] retailer signs on to the on-line system.

(25) Terminal—The commission or commission vendor's computer hardware that generates tickets based on player selections and Quick Pick selections.

[(52) Texas Lottery Commission—The agency created by House Bill 54, 72nd Legislature, First Called Session, as amended by House Bill 1587 and House Bill 1013, 73rd Legislature, Regular Session.]

(26) [(53)] Ticket—The [Any] tangible evidence issued by the commission to show one or more plays in a lottery game. [allow participation in a game or activity authorized by the State Lottery Act.]

(27) [(54)] Ticket number—A [The] number on the back of an [the] instant ticket that refers to the ticket sequence within a specific pack of an instant game.

[(55) Ticket bearer—The person who has signed the Lottery game ticket or who has possession of an unsigned Lottery game ticket.]

(28) [(56)] Validation number—A [The unique] number sequence printed on a ticket that provides for the verification of the ticket as a valid winner.

(29) [(57)] Valid ticket—A ticket that [which] meets all [specifications and] validation requirements and entitles the holder to a specific prize [amount].

[(58) Void ticket—Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply printed, fails any of the commission's confidential validation tests, or is a ticket produced by or for the commission for education and training purposes.]

[(59) Winning combination—One or more digits, numbers, or symbols randomly selected by the commission in a drawing which has been certified.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 344-5113



16 TAC §§401.304, 401.305, 401.307, 401.308, 401.312, 401.315

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 401, §§401.304, 401.305, 401.307, 401.308, 401.312 and 401.315, relating to On-Line Game Rules (General), "Lotto Texas" On-Line Game Rule, "Pick 3" On-Line Game Rule, "Cash Five" On-line Game Rule, "Texas Two Step" On-line Game, and "Mega Millions" On-Line Game Rule, respectively. By separate actions, the Commission will publish proposed amendments to Title 16, Part 9, Chapter 401, §401.301, relating to General Definition, proposed new §401.304, relating to On-Line Game Rule, and proposed new §401.305, relating to "Lotto Texas" On-Line Game Rule. The purpose of these proposed rule actions is to: (1) repeal the current version of the general on-line game rule; (2) repeal specific on-line game rules; (3) propose a new rule governing on-line games generally; (4) propose, as an alternative to the foregoing proposal, a new rule governing the game known as "Lotto Texas"; and (5) amend the general definition rule by deleting unnecessary provisions, clarifying certain definitions, and defining new terms.

Kathy Pyka, Controller, has determined there will be no significant fiscal impact for state or local government as a result of the repeal of §§401.304, 401.305, 401.307, 401.308, 401.312 and 401.315. Any costs to the state could be absorbed by current resources. For each year of the first five years the repeal is in effect, the fiscal impact is the following: FY 05, \$0; FY 06, \$0; FY 07, \$0; FY 08, \$0; FY 09, \$0. Additionally, there will be no effect on individuals, small businesses, micro businesses or local or state employment.

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the repeal as proposed is in effect, the public will benefit because the replacement of the repealed rules with the proposed rules will allow for more expeditious introduction to the public of new on-line games or on-line games that offer new playstyles or play options.

Comments on the proposed repeal may be submitted to Sarah Woelk, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The Commission will hold a public hearing on this proposal at 10:00 a.m. on December 19, 2005. Comments must be received within 30 days after publication of this proposal in order to be considered.

The repeal is proposed pursuant to Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery.

Government Code, Chapter 466 is affected by the proposed repeal.

§401.304. *On-Line Game Rules (General).*

§401.305. *"Lotto Texas" On-Line Game Rule.*

§401.307. *"Pick 3" On-Line Game Rule.*

§401.308. *"Cash Five" On-line Game.*

§401.312. *"Texas Two Step" On-line Game.*

§401.315. *"Mega Millions" On-Line Game Rule.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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16 TAC §401.304

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 401, §401.304, relating to On-Line Game Rule. The purpose of the proposed new section is to set forth a new single rule that applies to all on-line games.

Kathy Pyka, Controller, has determined there will be no significant fiscal impact for state or local government as a result of the new §401.304. Any costs to the state could be absorbed by current resources. For each year of the first five years the new rule is in effect, the fiscal impact is the following: FY 05, \$0; FY 06, \$0; FY 07, \$0; FY 08, \$0; FY 09, \$0. Additionally, there will be no effect on individuals, small businesses, micro businesses or local or state employment.

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the new rule as proposed is in effect, the public will benefit because the proposed rule will allow for more expeditious introduction to the public of new on-line games or on-line games that offer new playstyles or play options.

Comments on the proposed new rule may be submitted to Sarah Woelk, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The Commission will hold a public hearing on this proposal at 10:00 a.m. on December 19, 2005. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed pursuant to Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery.

Government Code, Chapter 466 is affected by the proposed new rule.

§401.304. *On-Line Game Rule.*

(a) On-Line Games. On-line games shall be conducted under applicable statutes, rules, and game procedures and under any further instructions issued by the executive director or his or her designee.

(b) Game Procedures.

(1) Subject to paragraph (6) of this subsection, the executive director or his or her designee shall approve game procedures for each on-line game.

(2) Game procedures for an on-line game must be published in the *Texas Register* before tickets for the game are sold to the public.

(3) Changes to game procedures for an on-line game must be published in the *Texas Register* before tickets subject to the changed rules are sold to the public.

(4) Game procedures must contain, at a minimum, the following information:

(A) The name of the game;

(B) A description of the game matrix and the playstyle;

(C) The price of a play;

(D) The means of selecting the winning combination of symbols or numbers;

(E) The frequency of drawings;

(F) A description of the playslips, if any, used for the game;

(G) The prize structure;

(H) A description of the circumstances, if any, in which proceeds from sales for a particular drawing are carried forward to a subsequent drawing;

(I) The percentage, if any, of ticket sales allocated to a prize reserve fund;

(J) The information that must be shown on a ticket;

(K) Whether and under what circumstances a ticket sale may be cancelled;

(L) Whether and under what circumstances a multidraw ticket may be sold;

(M) Whether and under what circumstances a ticket for advance play may be sold;

(N) Requirements for draw breaks, if any;

(O) Which claims, if any, must be presented at commission headquarters;

(P) Any payment options available; and

(Q) Any temporary promotional, bonus or add-on feature associated with the game.

(5) The executive director or his or her designee shall make games procedures available to the public upon request.

(6) The executive director must obtain approval from the commission before approving game procedures or changes to game procedures that involve any of the following:

- (A) The introduction of a new on-line game;
 - (B) A change in a game matrix or the playstyle;
 - (C) A change in the means of selecting the winning combination of symbols or numbers;
 - (D) A change in the price of a play, other than a change made in connection with a temporary promotional, bonus or add-on feature;
 - (E) A change in the frequency of drawings;
 - (F) A change in the prize structure, other than a change made in connection with a temporary promotional, bonus or add-on feature;
 - (G) A change in the percentage, if any, of ticket sales allocated to a prize reserve fund; and
 - (H) A change in payment options available.
- (7) The executive director, or his or her designee, must post on the commission website, notice of any change for which the executive director will seek commission approval, at least 15 calendar days before the commission considers the matter.

(c) Plays and Tickets.

- (1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.
- (2) An unsigned ticket is payable to the holder or bearer of the ticket if the ticket meets all of the conditions set out in subsection (f)(1) of this section.
- (3) It is the exclusive responsibility of the player to verify the accuracy of the player's selections and other data printed on a ticket.
- (4) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.
- (5) A retailer may enter a player's selections if the player is present in the licensed retail location.
- (6) No part of a sale in an on-line game may take place away from the terminal. For purposes of this section, a sale in an on-line game includes the exchange of consideration, the exchange of the playslip if one is used, and the generation of a ticket.

(d) Drawings.

- (1) The executive director or his or her designee shall approve drawing procedures to randomly select the winning symbols or numbers for each on-line game.
- (2) The drawing procedures for an on-line game must ensure the random selection of winning symbols or numbers.
- (3) The drawing procedures for an on-line game must set forth the type of drawing equipment to be used.
- (4) Drawing procedures must include provisions for the use of backup drawing equipment in the event the primary drawing equipment malfunctions or fails or is unavailable for any reason.

(e) Claims.

- (1) Unless the game procedures for a specific game require otherwise, to claim an on-line game prize of less than \$600 a claimant may present the apparent winning ticket either in person to a retailer or to the commission in person or by mail.
- (2) To claim an on-line game prize of \$600 or more a claimant must present the apparent winning on-line ticket to the

commission either in person or by mail. High-level prizes in certain on-line games may be required to be claimed in person at commission headquarters.

(3) Claimants must follow all commission procedures for claiming a prize.

(4) A ticket that does not meet all of the validation requirements is ineligible for any prize.

(5) The commission or a retailer will pay a prize only if the apparent winning ticket meets all applicable validation requirements and only if the claimant complies with all applicable claims procedures.

(6) The commission shall promptly notify the claimant if the commission determines that a ticket submitted with a claim is not a winning ticket.

(7) The commission shall not return a ticket to a claimant, regardless of whether the commission pays a prize or denies the claim.

(f) Validation.

(1) A ticket presented for validation is subject to the following validation requirements.

(A) The ticket must have been issued before the applicable drawing and in accordance with applicable game procedures.

(B) All printing on the ticket must be legible.

(C) Except as provided by paragraph (2) of this subsection, the ticket must not be mutilated, altered, unreadable, reconstituted, misregistered, defective, incomplete, or tampered with in any manner.

(D) The ticket must not be counterfeit or forged, in whole or in part. A ticket must not be a duplicate ticket.

(E) The ticket must have been purchased from an authorized retailer and must have been issued on official Texas Lottery paper stock.

(F) The commission must determine that the ticket was not stolen.

(G) The commission must determine that the ticket was not previously paid.

(H) The ticket data must have been recorded on the on-line system before the drawing, and the ticket data must match the computer record data in every respect.

(I) The ticket must pass all commission security checks.

(2) The commission may pay a prize for an on-line ticket that is partially mutilated or not intact if the ticket meets all other validation requirements.

(g) Prizes.

(1) A ticket is the only valid receipt for claiming a prize. A copy of a ticket or a playslip has no pecuniary or prize value and does not constitute evidence of a ticket purchase or of symbols or numbers selected.

(2) A person may win only one prize in connection with a single play and is entitled to the highest prize won by a play.

(3) The commission shall recognize only one person, either an individual or an entity, as the claimant of a particular prize.

(4) A retailer may pay to the bearer of a valid winning on-line ticket a prize of \$599 or less.

(5) All tickets validated by a retailer must be paid by that retailer.

(6) The commission shall pay a prize only upon presentation of proper identification. A claimant must provide either a social security number, an employer identification number issued by the Internal Revenue Service, or other documentation as approved by the executive director or by his or her designee.

(7) A retailer may pay prizes in cash or by certified check, money order, or by business check if a business check is acceptable to the claimant. A retailer that pays a prize with a check which is dishonored may be subject to license suspension or revocation.

(8) A retailer shall not charge a claimant any fee for payment of the prize or for cashing a business check drawn on the licensed retailer's account.

(9) A retailer shall not require a claimant to purchase a product in connection with a claim for a prize.

(10) All prizes are subject to tax withholding, offsets, and other withholdings as provided by law as well as withholdings for any delinquent taxes or other amounts owed to the state of Texas.

(11) A retailer may not pay a prize claimed by a minor. A minor must submit a claim for a prize to the commission.

(h) Agreement to Abide by Rules. In playing an on-line game and submitting an on-line ticket for validation, a person agrees to abide by applicable laws, rules, regulations, policies, and decisions of the executive director.

(i) End of Game. The executive director or his or her designee, at any time, may announce the termination date for an on-line game. No tickets for the game may be sold after the termination date.

(j) Liability for defective tickets. Liability for a defective ticket, if any, is limited to replacement of the ticket with another unplayed ticket in the same game (or a ticket of equivalent sales price from any other current lottery game) or refund of the sales price, at the discretion of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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16 TAC §401.305

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 401, §401.305, relating to "Lotto Texas" On-Line Game Rule. The purpose of the new rule is to set out a new matrix for the Lotto Texas on-line game.

Kathy Pyka, Controller, has determined for the first five year period the new rule is in effect, there will be no measurable fiscal implication for state or local government as a result of enforcing this rule. The new rule is anticipated to have a positive impact on revenue by limiting the ongoing sales decline occurring under the current game matrix, but the effect is not quantifiable. For each year of the first five years the section will be in effect,

the fiscal impact is the following: FY 06, \$0; FY 07, \$0; FY 08 \$0; FY 09, \$0; and FY 10, \$0. Additionally, there will be no adverse effect on individuals, small businesses, micro businesses or local or state employment.

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the new rule as proposed is in effect, the public will benefit because the odds of winning the top prize will be increased.

Comments on the proposed new rule may be submitted to Sarah Woelk, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. The Commission will hold a public hearing on this proposal at 10:00 a.m. on December 19, 2005. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed pursuant to Government Code, §466.015, which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery.

Government Code, Chapter 466 is affected by the proposed new rule.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. The executive director is authorized to conduct a game known as "Lotto Texas." The executive director may issue further directives for the conduct of Lotto Texas that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of six different numbers from 1 through 54 for one opportunity to win in Lotto Texas and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 54 numbers on a playslip for use in selecting numbers for a Lotto Texas play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Lotto Texas plays.

(4) Roll cycle--A series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

(c) Plays and tickets

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of a play is \$1.

(3) A player may use a single playslip to purchase up to five plays.

(4) A player may use a single playslip to purchase the same play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a self-service terminal;

(B) by using a playslip to select numbers;

(C) by requesting a retailer to use Quick Pick to select numbers; or

(D) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make quick-pick selections only if the request is made in person.

(8) At the time of making a play, a person may select the option for payment of the cash value of a share of the jackpot if the play is a winning play.

(9) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, the jackpot payment option, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(10) A playslip has no monetary value and is not evidence of a play.

(11) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(12) The commission shall establish a time period before each drawing during which tickets may not be sold.

(13) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings

(1) Lotto Texas drawings shall be held each week on Wednesday and Saturday at 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) Six different numbers from 1 through 54 shall be drawn at each Lotto Texas drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Advertised jackpots. For each drawing, the commission shall approve a jackpot amount to be advertised. The advertised amount shall be an amount payable in 25 annual installments. To the extent that advertised amount is based on projected sales, the projections shall be fair and reasonable. The commission may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections.

(f) Prizes

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a play matching (in any order) the six numbers drawn in a drawing is entitled to a share of the jackpot prize (first prize) for the drawing.

(B) The jackpot prize for a drawing is the greater of

(i) 40.47 percent of the proceeds from ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 25 annual installments; or

(ii) The amount advertised in accordance with subsection (e) of this section as the estimated jackpot for the drawing, paid in 25 annual installments.

(C) Except as provided by subparagraph (F) of this paragraph, a person who is entitled to a share of a jackpot prize and who did not opt to receive the cash value of the jackpot prize shall receive payment in 25 annual installments.

(D) The first installment payment shall be made upon completion of commission validation procedures. The subsequent 24 installment payments shall be made annually on the 15th day of the month in which the applicable drawing occurred.

(E) The second through 24th installment payments shall be in equal amounts. The first installment payment may be equal to or higher than the subsequent installment payments.

(F) If a person would otherwise receive total installment payments of \$2 million or less, the commission shall pay the person, upon completion of all validation procedures, a single payment in the amount of the cash value of those total installment payments. The cash value is the cost on the first business day after the applicable drawing of funding those installment payments.

(G) A person who is entitled to a share of the jackpot and who selected the cash value option shall receive the greater of the following two amounts:

(i) a share of 40.47 percent of total sales for the roll cycle; or

(ii) the cost on the day after the drawing of funding a share of installment payments under subparagraph (B)(ii) of this paragraph.

(H) A payment under subparagraph (G) of this paragraph shall be made upon completion of commission validation procedures.

(I) Any investment necessary to fund a jackpot prize shall be made on the first business day after a drawing for which one or more tickets were sold that match the six numbers drawn in the drawing.

(J) A claim for a jackpot prize must be presented at the Austin claim center.

(K) If sales proceeds and the Lotto Texas prize reserve fund are not sufficient to pay a jackpot prize, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(2) Second prize.

(A) A person who holds a valid ticket for a play matching (in any order) five of the six numbers drawn in a drawing is entitled to a share of the second prize for that drawing.

(B) The second prize consists of 2.23 percent of the proceeds from ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded down to an even dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a play matching (in any order) four of the six numbers drawn in a drawing is entitled to a share of the third prize for that drawing.

(B) The third prize consists of 3.28 percent of the proceeds from ticket sales for the drawing and any amounts carried forward under subparagraphs (C) and (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded down to an even dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a play matching (in any order) three of the six numbers drawn in a drawing is entitled to a guaranteed prize of \$3.

(B) To the extent that the total amount of fourth prizes for a drawing exceeds 4.02 percent of the proceeds from ticket sales for the drawing, the commission shall use funds from the Lotto Texas prize reserve fund or any other authorized source, including the State Lottery Account as identified in Government Code, §466.355.

(C) To the extent that the total amount of fourth prizes for a drawing is less than 4.02 percent of the proceeds from ticket sales of for the drawing, the difference shall be carried forward to fund future fourth prize payments.

(5) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(6) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(7) Jackpot payment amounts are calculated on the first business day after the applicable drawing. A claimant is not entitled to interest or other earnings on those amounts, regardless of when the claim is actually presented and regardless of the dates on which payments are made.

(g) Jackpot information on Commission website

(1) After the commission has approved an advertised estimated jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(A) the amount of ticket sales, if any, for previous drawings in the roll cycle;

(B) the amount of projected ticket sales for the upcoming drawing;

(C) investment information used to determine the advertised estimated jackpot; and

(D) other information used to determine the advertised estimated jackpot.

(2) After the commission determines that one or more tickets have been sold that match the six numbers drawn in a drawing, the commission shall post on the agency website information used to calculate the jackpot prize.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505439

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 344-5113



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.728, 21.730, 21.731, 21.733, 21.734, 21.735

The Texas Higher Education Coordinating Board proposes amendments to §§21.728, 21.730, 21.731, 21.733, 21.734, and 21.735 of Board rules, concerning Determining Residence Status. Specifically, the amendments to §21.728 provide a new definition for a Residence Determination Official, incorporate revised versions of Chart II and Chart IV, and clarify the definition of "gainful employment." The Revised Chart II incorporates the following changes:

The title was changed to "Revised Chart II" to reflect the document has been revised from the version that was adopted by the Board in October. Wording in the introductory paragraph, Part B question 1 and the instructions following Part B was slightly changed to improve the readability of the text. Throughout the chart instructions to "go on" to the next section were changed to read, "continue" when the person is being instructed to move to the next following part and changed from "go to" to "skip to" when the person is being advised to ignore the following section and skip to a later part of the Chart. Students answering "yes" to Part B question 1 are now advised to complete all of the rest of the questions in that section rather than just questions 2-4. In Part C an instruction line near the title of the Part incorrectly indicated all students were to complete this part. If students answer Part B correctly, they do not complete Part C. A line of instruction for students who are not sure whether they are residents or not, advising them to complete the form was added. In Part D an instruction line near the title of the Part which incorrectly indicated all students were to complete this part. If students answer Part B or C correctly, they do not complete Part D. Instructions at the end of Part D were reworded to make sure students knew which two forms they were to complete and submit to their institutions. An informational sentence was added to Question 2 of Part E to advise persons that step parents cannot complete the form as parents unless they have adopted the student. At the request of institutions, Question 1 of Part F was split into two separate questions, one asking about U.S. Citizenship and the other about

Permanent Resident status. The wording to Question 3 Part F was altered to more clearly reflect Bureau of Citizenship and Immigrations Services procedures now in effect for applicants for Permanent Resident status. Question 6 b was added to Part F to solicit information about the reasons for which the person is in Texas. Answers to this question speak to the intentions of the person to make Texas his/her domicile. Part c was added to Question 10 of Part F to determine whether the person had been married to the Texas domiciliary for at least 12 months, a requirement for residency. Instructions were added for students completing Part F to proceed to part H. At the request of institutions, Question 1 of Part g was split into two separate questions, one asking about U.S. Citizenship and the other about Permanent Resident status. The wording to Question 3 Part G was altered to more clearly reflect Bureau of Citizenship and Immigrations Services procedures now in effect for applicants for Permanent Resident status. Question 6 b was added to Part G to solicit information about the reasons for which the person is in Texas. Answers to this question speak to the intentions of the person to make Texas his/her domicile. Question 10 was added to Part G to determine whether the parent or legal guardian might have a claim to residency based on his/her spouse. The Revised Chart IV incorporates the following changes: The wording in the introductory paragraph for the chart was simplified for easier reading. Item 1 of Part A was revised to clarify that all individuals who meet the requirements of being gainfully employed can use that employment as a basis of establishing a domicile and proving residence in Texas for at least 12 months. Part B is eliminated because it has been concluded that many students lease apartments while attending college in Texas, and that this action is not a clear indication of a decision by the student to make Texas his/her permanent home (domicile). Similar conclusions were reached regarding the filing of U.S. Armed Forces form DD2058 and the execution of a Last Will and Testament and are reflected in Part B (previously labeled items 5 and 6 of Part C). A line of clarifying language has been added to Part C to help individuals understand that the items listed in this Part do not show the establishment of a domicile in Texas. They simply can be used as proof of 12 months in the state. The leasing or renting of property was added as a possible means of documenting 12 months' presence in the state as a item 13 in Part C. The amendment to §21.730 clarifies that persons who have already graduated from high school may not use the additional acquisition of the equivalent of a high school diploma in Texas as a means of acquiring residency and deletes the provision that permits the filing of a Last Will and Testament as evidence of establishment of a domicile in Texas. The amendment to §21.731 incorporates the Revised Chart II and the Revised Chart IV into this section and deletes unnecessary descriptive language. The amendment to Section 21.733 incorporates the Revised Chart IV into this section and the amendment to Section 21.734 adds a provision regarding the erroneous classification of a person as a Texas resident when the person is entitled or permitted to pay resident tuition. The amendment to Section 21.735 deletes the provision that permits certain persons who have graduated or completed 45 semester credit hours while enrolled under the waiver program described in Section 2.735(5) to pay resident tuition at Texas A&M-TeXarkana

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Lois Hollis has also determined that for each year of the first five years the amendments are in effect there will be more uniformity in the determination of residency among institutions, causing less confusion for students and parents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment

Comments on the proposal may be submitted to Lois Hollis, P. O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

These amendments are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

These amendments affect Texas Education Code, §§54.0501 - 54.075.

§21.728. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) - (2) (No change.)
- (3) Core Residency Questions--the questions promulgated by the Board and described in Revised Chart II, which is incorporated into this subchapter for all purposes, to be completed by a person and used by an institution to determine if the person is a Texas resident.
Figure: 19 TAC §21.728(3)
- (4) - (6) (No change.)
- (7) Established a domicile in Texas--a person has established a domicile in Texas if he or she has met the conditions shown in Revised Chart IV, which is incorporated into this subchapter for all purposes [§21.730 (d) of this title (relating to Determination of Resident Status)].
Figure: 19 TAC §21.728(7)
- (8) (No change.)
- (9) Gainful employment--[lawful] activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for tuition purposes, as may a person whose primary support is public assistance.
- (10) - (21) (No change.)
- (22) Residence Determination Official--the primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.
- (23) [(22)] Resident tuition--the amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.
- (24) [(23)] Temporary absence--absence from the State of Texas with the intention to return, generally for a period of less than five years.
- (25) [(24)] United States Citizenship and Immigration Services (USCIS)- the bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.730. *Determination of Resident Status.*

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

(A) graduated from a public or accredited private high school in this state or, as an alternative to high school graduation, received the equivalent of a high school diploma in this state, and

(B) (No change.)

(2) - (3) (No change.)

(b) - (c) (No change.)

(d) A domicile in Texas is presumed if, at least 12 months prior to the census date of the semester in which he or she is to enroll, the person owns real property in Texas, owns a business in Texas, or is married to a person who has established a domicile in Texas; ~~or has executed a currently valid Last Will and Testament that has been deposited with a county clerk in Texas; indicating the person is a resident of Texas~~. Gainful employment other than work-study and other such student employment can also be a basis for establishing a domicile.

(e) - (f) (No change.)

§21.731. *Information Required to Initially Establish Resident Status.*

(a) To initially establish resident status under §21.730 of this title, (relating to Determination of Resident Status), a person shall provide the institution with a completed set of Core Residency Questions as described in Revised Chart II, which is incorporated into §21.728(3) of this title (relating to Definitions).

Figure: 19 TAC §21.731(a) (No change.)

(b) An institution may request that a person provide documentation to support the answers to the Core Residency Questions. A list of appropriate documents is described in Revised Chart IV ~~of §21.733(a) of this title (relating to Reclassification Based on Additional or Changed Information); and~~ which is incorporated into this subchapter for all purposes.

(c) - (d) (No change.)

§21.733. *Reclassification Based on Additional or Changed Information.*

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation as described in Revised Chart IV, which is incorporated into §21.731(b) of this title (relating to Information Required to Initially Establish Resident Status).

Figure: 19 TAC §21.733(a) (No change.)

(b) - (d) (No change.)

§21.734. *Errors in Classification.*

(a) - (c) (No change.)

(d) If an institution erroneously classified a person as a resident of this state under this subchapter and the person is entitled or permitted to pay resident tuition under this subchapter, that person is not liable for the difference between resident and nonresident tuition under this section.

(e) ~~[(d)]~~ If an institution erroneously classifies a person as a nonresident and the person is a resident under this subchapter, the institution shall refund the difference in resident and nonresident tuition for each semester in which the student was erroneously classified and paid the nonresident tuition rate.

§21.735. *Waiver Programs for Certain Nonresident Persons.*

A person who is classified as a nonresident under the provisions of this section shall be permitted to pay resident tuition, if the person qualifies for one of the following waiver programs:

(1) - (4) (No change.)

(5) Programs for Lowered Tuition for Individuals from Bordering States or Mexico.

(A) (No change.)

(B) Programs That Do Not Require Reciprocity.

~~[(i)]~~ Persons who reside in another state may pay a lowered nonresident tuition not less than \$30 per semester credit hour above the current resident tuition rate when they attend a general academic teaching institution located within 100 miles of the Texas border if:

~~(i)~~ ~~[(i)]~~ the governing board of the institution approves the tuition rate as in the best interest of the institution and finds that such a rate will not cause unreasonable harm to any other institution; and

~~(ii)~~ ~~[(ii)]~~ the Commissioner approves the tuition rate by finding that the institution has a surplus of total educational and general space as calculated by the Board's most current space projection model. This obligation to obtain the approval of the Commissioner is continuing and approval to participate in this waiver program must be obtained at least every two years.

~~[(ii)]~~ Persons who reside in New Mexico, Oklahoma, Arkansas or Louisiana and who have graduated or completed 45 semester credit hours while enrolled on a reciprocal basis through Texarkana College may pay resident tuition if they attend Texas A&M-Texarkana.]

(C) (No change.)

(6) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505486

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: January 26, 2006

For further information, please call: (512) 427-6114



19 TAC §21.736

The Texas Higher Education Coordinating Board proposes new §21.736 of Board rules, concerning Determining Residence Status. Specifically, new §21.736 requires each institution to designate a Residence Determination Official and requires the designated official to be knowledgeable of the residency rules and statutes and to receive training at least once in each year on the applicable residency rules and statutes.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new section is in effect, there will be no fiscal implications to state or

local government as a result of enforcing or administering the rules.

Ms. Lois Hollis has also determined that for each year of the first five years the new section is in effect there will be more uniformity in the determination of residency among institutions, causing less confusion for students and parents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The new section affects Texas Education Code, §§54.0501 - 54.075.

§21.736. Residence Determination Official.

(a) Each institution shall designate an individual that is employed by the institution as a Residence Determination Official.

(b) The Residence Determination Official shall:

(1) be knowledgeable of the requirements set out in these rules and the applicable statutes; and

(2) attend at least one training or workshop provided by the Coordinating Board regarding these rules and the applicable statutes in each state fiscal year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 26, 2006

For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.26

The Texas Higher Education Coordinating Board proposes an amendment to §22.26 concerning the Tuition Equalization Grant Program. House Bill 1172, 79th Legislature, Regular Session, added new §61.2251 of the Texas Education Code, regarding eligibility requirements for persons initially awarded a Tuition Equalization Grant during or after the 2005-2006 academic year. The new section provides that a person may continue to receive a Tuition Equalization Grant if his or her academic performance

drops below program requirements because of a hardship or for other good cause. Specifically, the amendments to §22.26 indicates that each institution must adopt its own hardship policy and make it available for public review.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the section will be that individuals will be better informed about their options to continue in the program when they experience hardships. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.229, which authorizes the Coordinating Board to adopt any rules necessary to administer Texas Education Code, §§61.221 - 61.230; and §61.2251, which states that the Coordinating Board shall adopt rules to allow a person who is otherwise eligible to receive a Tuition Equalization Grant, in the event of a hardship or for other good cause shown, to receive a Tuition Equalization Grant.

The amendment affects the Texas Education Code, §§61.221 - 61.230.

§22.26. Hardship Provisions for Persons Awarded TEG for the First Time on or after September 1, 2005.

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person to receive a TEG while enrolled less than full time or if the student's grade point average or number of hours completed falls below the satisfactory academic progress requirements as referred to in §22.24 of this title (relating to Eligible Students). Such conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance; or

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance.

(b) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505483

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2006
For further information, please call: (512) 427-6114



SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.231

The Texas Higher Education Coordinating Board proposes amendments to §22.231 concerning the Toward Excellence, Access, And Success (TEXAS) Grant Program. The Texas Education Code, §56.305, allows students to continue receiving TEXAS grants if they fall below program academic progress requirements due to hardship or other good cause. The amendments to §22.231 indicates that each institution must adopt its own hardship policy and make it available for public review.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the section will be that individuals will be better informed about their options to continue in the program when they experience hardships. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.303, which states that the Coordinating Board is authorized to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

The amendments affect the Texas Education Code, §§56.301 - 56.311.

§22.231. *Hardship Provisions.*

(a) - (c) (No change.)

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505485

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2006
For further information, please call: (512) 427-6114



SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.257

The Texas Higher Education Coordinating Board proposes amendments to §22.257 concerning the Texas Educational Opportunity Grant Program. Senate Bill 1227, 79th Legislature, Regular Session, amended §56.405 of the Texas Education Code, regarding continuing eligibility and academic requirements for the program, by adding subsection (f), which provides that a person may continue to receive a Texas Educational Opportunity Grant if his or her academic performance drops below program requirements because of a hardship or for other good cause. Specifically, the amendments to §22.257 indicate that each institution must adopt its own hardship policy and make it available for public review.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the section will be that individuals will be better informed about their options to continue in the program when they experience hardships. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, 512-427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.403, which states that the Coordinating Board is authorized to adopt any rules necessary to implement the program.

The amendments affect the Texas Education Code, §§56.401 - 56.407.

§22.257. *Hardship Provisions for Students Awarded Grants on or After September 1, 2005.*

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person who is awarded a grant on or after September 1, 2005 to receive a Texas Educational Opportunity Grant while enrolled for an equivalent of less than one-half time or if the student's grade point average or completion rate falls below the satisfactory academic progress requirements of §22.256(b)(7) of this title (relating to Eligible Students). Such conditions are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than six hours to complete one's degree plan.

(b) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505484

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 26, 2006

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.9

The Texas State Board of Pharmacy proposes amendments to §281.9, concerning Rules Governing Penalties Against a License. S.B. 410, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act authorizing the Board additional disciplinary sanctions against a pharmacy technician registration when the Board determines that a ground for discipline exists. In addition, S.B. 410 requires the Board to adopt an administrative penalty schedule for violations of the Texas Pharmacy Act or Board Rules. The amendments, if adopted, update the rules in accordance with amendments made to the Texas Pharmacy Act, §568.0035 authorizing the Board to take the following disciplinary actions against a pharmacy technician registration: probation, reprimand, restrict, revoke, suspend, retire, or impose an administrative penalty. The amendments, if adopted, also clarify the administrative penalties for violations of the Texas Pharmacy Act or Board rules to ensure that the amount of administrative penalties imposed for pharmacists, pharmacies, and pharmacy technicians are appropriate to the violation. In addition, the amendments, if adopted, change the title of §281.9 from Rules Governing Penalties Against a License to Rules Governing Disciplinary Actions.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state or local government as a result of enforcing or administering the rule. The Texas Pharmacy Act was amended during the 79th Regular Session of the Texas Leg-

islature authorizing the Board to assess administrative penalties against a pharmacy technician registration. It is difficult to predict the number of orders which will be entered assessing administrative penalties against a pharmacy technician registration and it is difficult to predict the specific amount of the administrative penalties assessed. However, the Board estimates that approximately 36 orders assessing an administrative penalty of an average of \$500 will be entered each year of the five-year period. This would result in a revenue gain of approximately \$18,000 for each year of the five-year period.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that the amounts of administrative penalties imposed for violations of the Texas Pharmacy Act or Board Rules are appropriate to the violation. The fiscal impact to individuals required to comply with this section will be dependent on the administrative penalties imposed as outlined in the rule.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §§551.002, 554.051, 566.002, and 568.0035 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §566.002 as authorizing the agency to adopt an administrative penalty schedule. The Board interprets §568.0035 as authorizing the agency to adopt rules regarding the disciplinary actions against pharmacy technicians.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.9. Rules Governing Disciplinary Actions [Penalties Against a License].

(a) Pharmacists, interns, ~~and~~ pharmacies, and pharmacy technicians. For the purpose of the Act, §565.051~~(a)~~ and §568.0035:

(1) - (6) (No change.)

(b) Schedule of administrative penalties. In disciplinary matters, the Board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to provide patient counseling: \$1,000;

(B) failure to conduct a drug regimen review or inappropriate drug regimen reviews provided by Board Rule 291.33(c)(2)(A): \$1,000;

(C) failure to clarify a prescription with the prescriber: \$1,000;

(D) failure to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,000;

(E) failure to identify the dispensing pharmacist on required pharmacy records: \$500;

(F) failure to maintain records of prescriptions: \$500;

(G) failure to respond or failure to provide all requested records within the time specified in a Board audit of continuing education records: \$100 per hour of continuing education credit not provided;

(H) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000

(I) shortages of prescription drugs following an accountability audit: up to \$5,000;

(J) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;

(K) dispensing unauthorized prescriptions: up to \$5,000;

(L) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;

(M) violating the reporting provisions of an Order of the Board: \$500 - \$1,000;

(N) failure to report or to assure the report of a malpractice claim: up to \$1,000;

(O) failure to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;

(P) practicing pharmacy with a delinquent license: \$250 - \$1,000;

(Q) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;

(R) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;

(S) failure to comply with the requirements of the Official Prescription Program: up to \$1,000;

(T) aiding and abetting the unlicensed practice of pharmacy: up to \$5,000;

(U) criminal violations: up to \$5,000;

(V) unauthorized substitutions: \$1,000;

(W) insurance or welfare fraud: up to \$5,000;

(X) sale, purchase, or trade or offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(Y) sale, purchase, or trade or offer to sell, purchase, or trade of prescription drug samples as provided by Board Rule 281.7(a)(27) of this title (relating to Grounds for Discipline for a Pharmacist License): up to \$1,000;

(Z) failure to keep, maintain or furnish an annual inventory as required by Board Rule 291.17: \$1,000;

(AA) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,000;

(BB) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(CC) failure to inform the Board of a change of name, address or employment within 10 days of such change: \$250 - \$500.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to provide patient counseling: \$1,500;

(B) failure to conduct a drug regimen review or inappropriate drug regimen reviews provided by Board Rule 291.33(c)(2)(A): \$1,500;

(C) failure to clarify a prescription with the prescriber: \$1,500;

(D) failure to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,500;

(E) failure to identify the dispensing pharmacist on required pharmacy records: \$500;

(F) failure to maintain records of prescriptions: \$500;

(G) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000;

(H) shortages of prescription drugs following an accountability audit: up to \$5,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;

(J) dispensing unauthorized prescriptions: up to \$5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;

(L) violating the reporting provisions of an Order of the Board: \$1,000 - \$5,000;

(M) failure to report or to assure the report of a malpractice claim: up to \$1,000;

(N) failure to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;

(O) allowing a pharmacist to practicing pharmacy with a delinquent license: \$250 - \$1,000;

(P) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;

(Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;

(R) failure to comply with the requirements of the Official Prescription Program: up to \$1,000;

(S) aiding and abetting the unlicensed practice of pharmacy: up to \$5,000;

(T) criminal violations: up to \$5,000;

(U) unauthorized substitutions: \$1,000;

(V) insurance or welfare fraud: up to \$5,000;

(W) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(X) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by Board Rule 281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): up to \$1,000;

(Y) failure to keep, maintain or furnish an annual inventory as required by Board Rule 291.17: \$1,000;

(Z) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,500;

(AA) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(BB) failure to inform the Board of a change of name, address or employment within 10 days of such change: \$250 - \$500.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to respond or failure to provide all requested records within the time specified in a Board audit of continuing education records: \$30 per hour of continuing education credit not provided;

(B) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$500

(C) shortages of prescription drugs following an accountability audit: up to \$5,000;

(D) violating the reporting provisions of an Order of the Board: \$250 - \$500;

(E) failure to report or to assure the report of a malpractice claim: up to \$500;

(F) performing the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;

(G) criminal violations: up to \$5,000;

(H) insurance or welfare fraud: up to \$5,000;

(I) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,000;

(J) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(K) failure to inform the Board of a change of name, address or employment within 10 days of such change: \$100 - \$250.

(4) Any of the violations listed in this section may be appropriate for disposition by the administrative penalties in this section in conjunction with any other penalties in subsection (a) of this section.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(6) The amount, to the extent possible, shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) efforts to correct the violation; and

(F) and other matter that justice may require.

[(b) Pharmacy technicians. For the purpose of the Act, §568.003(a):]

[(1) "Revoke" means a registration is void and may not be reissued; provided, however, upon the expiration of 12 months from and after the effective date of the order revoking a registration, application may be made to the board by the former registrant for the issuance of a registration.]

[(2) "Suspend" means a license is of no further force and effect for a period of time as determined by the board.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505427

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-8028



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.6

The Texas State Board of Pharmacy proposes amendments to §283.6, concerning Preceptor Requirements. The rule was adopted by the Board on an emergency basis and became effective September 22, 2005. The publication as proposed will allow public comment on the emergency rules. The amendments, if adopted, provide procedures and requirements to allow a preceptor in a Texas College of Pharmacy Internship Program to supervise up to two interns.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that interns would be adequately supervised if an extraordinary demand for preceptors exists in emergency situations caused by natural or manmade disasters or any other exceptional situations. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite

3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.6. *Preceptor Requirements.*

(a) - (c) (No change.)

(d) A preceptor may supervise only one pharmacist-intern at any given time. Texas Colleges of Pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college based, structured internship program. In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas College of Pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas Colleges of Pharmacy of the length of time a preceptor may supervise up to two interns.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



22 TAC §283.7

The Texas State Board of Pharmacy proposes amendments to §283.7, concerning Examination Requirements. S.B. 410, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act requiring the Board to adopt rules to ensure the North American Pharmacist Licensure Examination (NAPLEX) and Texas Pharmacy Jurisprudence Examination are administered in compliance with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101 et seq.). The amendments, if adopted, clarify the NAPLEX and Texas Pharmacy Jurisprudence Examination are administered in compliance with the ADA.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that the NAPLEX and Texas pharmacy Jurisprudence Examinations are administered in compliance with the ADA of 1990. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §§551.002, 554.051, and 558.058 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.058 as authorizing the agency to adopt rules to ensure that examinations are administered in compliance with the ADA.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.7. *Examination Requirements.*

Each applicant for licensure by examination shall pass the Texas Pharmacy Jurisprudence Examination and the NAPLEX. The examination requirements shall be as follows:

(1) - (8) (No change.)

(9) The NAPLEX and Texas Pharmacy Jurisprudence Examination shall be administered in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and in accordance with NABP policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



22 TAC §283.10

The Texas State Board of Pharmacy proposes amendments to §283.10, concerning Requirements for Application for a Pharmacist License Which Has Expired. S.B. 410, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act requiring the Board to collect a renewal fee, that is equal to one and one-half times the renewal fee, for a pharmacist license that has been expired for 90 days or less, and to collect a renewal fee, that is equal to two times the renewal fee, for a pharmacist license that has been expired for more than 90 days but less than one year. The amendments, if adopted, update the renewal fees required to renew an expired pharma-

cist license in accordance with amendments to §559.003 of the Texas Pharmacy Act.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state or local government as a result of enforcing or administering the rule. It is difficult to predict the number of pharmacist licenses that will be delinquent each year. However, based on the number of pharmacists paying a delinquent penalty in FY2004, the state may lose approximately \$5,000 each year in delinquent penalties because the penalty has been lowered for a pharmacist license that has been expired for 90 days or less.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that pharmacist licenses that are not renewed and expire pay the appropriate renewal fees. Pharmacists required to pay a delinquent penalty will pay a lower delinquent penalty.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §§551.002, 554.051, 559.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §559.003 as authorizing the agency to adopt rules regarding the renewal of a pharmacist.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.10. Requirements for Application for a Pharmacist License Which Has Expired.

(a) Expired less than 90 days. If a person's license has been expired for 90 days or less, the person may renew the license by:

(1) paying to the board a renewal fee that is equal to one and one-half times the renewal fee for the license as specified in §295.5 of this title (relating to Pharmacist License Renewal Fees) [the required renewal fee and a fee that is one-half of the examination fee for a license]; and

(2) (No change.)

(b) Expired more than 90 days. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by:

(1) paying to the board all unpaid renewal fees and a renewal fee that is equal to two times the renewal fee for the license as specified in §295.5 of this title [fee that is equal to the examination fee for a license]; and

(2) (No change.)

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6, §291.14

The Texas State Board of Pharmacy proposes amendments to §291.6, concerning Pharmacy License Fees and §291.14, concerning Pharmacy License Renewal. S.B. 410, which passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act requiring the Board to collect a renewal fee, that is equal to one and one-half times the renewal fee, for a pharmacy license that has been expired for 90 days or less, and to collect a renewal fee, that is equal to two times the renewal fee, for a pharmacy license that has been expired for more than 90 days but less than one year. The bill also outlines additional application and renewal requirements for Class E (non-resident) pharmacies. The amendments, if adopted, update the renewal fees to renew an expired pharmacy license in accordance with amendments to §561.003 of the Texas Pharmacy Act; clarify the amount of the pharmacy license renewal fee; and establish additional renewal requirements for Class E (non-resident) pharmacies.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for state or local government as a result of enforcing or administering the rules. It is difficult to predict the number of pharmacy licenses that will be delinquent each year. However, based on the number of pharmacies paying a delinquent penalty in FY2004, the state may lose approximately \$3,500 each year in delinquent penalties because the penalty has been lowered for a pharmacy license that has been expired for 90 days or less. The Board anticipates that most pharmacies will become active prior to the license being expired for more than 90 days but less than one year.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the rules will ensure that pharmacy licenses, that are not renewed and expire, pay the appropriate renewal fees and that Class E (non-resident) pharmacies meet the requirements for licensure. Pharmacies will be required to pay a lower delinquent penalty.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §§551.002, 554.051, 560.052, 561.003 and 561.0031 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code).

The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.052 as authorizing the agency to establish standards for Class E pharmacies to meet in order to qualify for licensing as a pharmacy. The Board interprets §561.003 as authorizing the agency to adopt rules regarding the renewal of a pharmacy license. The Board interprets §561.0031 as authorizing the agency to establish additional renewal requirements for Class E pharmacies.

The statutes affected by these rules: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for an initial license shall be \$341 ~~[\$368]~~ for a two year registration and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006. [is composed of the following:]

(2) In addition, the following fees shall be collected:

~~[(A) \$341 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006;]~~

(A) ~~[(B)]~~ \$12 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) ~~[(C)]~~ \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) ~~[(D)]~~ \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) ~~[(2)]~~ New pharmacy licenses shall be assigned an expiration date and initial registration fee shall be prorated based on the assigned expiration date.

(b) (No change.)

(c) Renewal Fee. ~~[The fee for biennial renewal of a pharmacy license shall be \$365 and is composed of the following:]~~

(1) The fee for biennial renewal of a pharmacy license shall be \$341 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006;

(2) In addition, the following fees shall be collected: [\$12 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;]

(A) \$12 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

~~[(3) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and]~~

~~[(4) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.]~~

(d) (No change.)

§291.14. Pharmacy License Renewal.

(a) Renewal requirements. ~~[For the purposes of the Act, Chapter 561.]~~

(1) A license to operate a pharmacy expires on the last day of the assigned expiration month.

(2) Timely receipt of the completed application and renewal fee means the receipt in the board's office of such application and renewal fee.

(3) The provision of the Act, §561.005, shall apply if the completed application and a renewal fee is not received on or before the last day of the assigned expiration month.

(4) An expired license may be renewed according to the following schedule:

(A) If the license has been expired for 90 days or less, the license may be renewed by paying to the board a renewal fee that is equal to one and one-half times the required renewal fee as specified in §291.6 of this title (relating to Pharmacy License Fees).

(B) If the license has been expired for more than 90 days but less than one year, the license may be renewed by paying to the board a renewal fee that is equal to two times the required renewal fee as specified in §291.6 of this title.

(C) If the license has been expired for one year or more, the license may not be renewed. The pharmacy may apply for a new license as specified in §291.1 of this title (relating to Pharmacy License Application).

~~[(4) If a pharmacy license has expired, the person may renew the license by paying to the board the required renewal fee as specified in §291.6 of this title (relating to Pharmacy License Fees) and a fee that is equal to the renewal fee for the pharmacy license.]~~

(b) Additional renewal requirements for Class E pharmacies. In addition to the renewal requirements in subsection (a) of this section, a Class E pharmacy shall have on file with the Board an inspection report issued:

(1) not more than three years before the date the renewal application is received; and

(2) by the pharmacy licensing board in the state of the pharmacy's physical location except as provided in §291.104 of this title (relating to Operational Standards).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505430

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-8028



22 TAC §291.13

The Texas State Board of Pharmacy proposes new §291.13, concerning Emergency Remote Pharmacy License. The rule was adopted by the Board on an emergency basis and became

effective September 22, 2005. The publication as proposed will allow public comment on the emergency rules. The new rule, if adopted, provide procedures and requirements for the Board to grant the holder of a Class A (Community), Class C (Institutional), or Class D (Clinic) pharmacy the authority to operate a pharmacy and provide pharmacy services at a remote location.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that emergency remote pharmacies will be able to operate when emergencies caused by natural or manmade disasters or any other exceptional situations cause an extraordinary demand for pharmacy services. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed new rule may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The new rule is proposed under §§551.002, 554.051, and 560.053 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.053 as authorizing the agency to adopt rules establishing additional pharmacy classifications.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.13. Emergency Remote Pharmacy License.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Emergency remote pharmacy--a pharmacy not located at the same Texas location as a home pharmacy at which pharmacy services are provided during an emergency situation.

(2) Emergency situation--an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacy services.

(3) Home pharmacy--a currently licensed Class A (Community), Class C (Institutional), or Class D (Clinic) pharmacy that is providing emergency pharmacy services through an emergency remote pharmacy.

(b) Emergency remote pharmacy license. In an emergency situation, the board may grant a holder of a Class A (Community), Class C (Institutional), or Class D (Clinic) pharmacy license, the authority to operate a pharmacy and provide pharmacy services at an alternate location. The following is applicable for the emergency remote pharmacy.

(1) The emergency remote pharmacy will not be issued a separate pharmacy license, but shall operate under the license of the home pharmacy. To qualify for an emergency remote pharmacy license, the applicant must submit an application including the following information:

(A) license number, name, address, and phone number of the home pharmacy;

(B) name, address, and phone number of the emergency remote pharmacy;

(C) name and Texas pharmacist license number of the pharmacist-in-charge of the home pharmacy and of the pharmacist-in-charge of the emergency remote pharmacy; and

(D) any other information required by the board.

(2) The board will notify the home pharmacy of the approval of an emergency remote pharmacy license.

(3) The emergency remote pharmacy license shall be valid for a period as determined by the board not to exceed six months. The executive director of the board, in his/her discretion, may renew the remote license for an additional six months, if the emergency situation still exists and the holder of the license shows good cause for emergency remote pharmacy to continue operation.

(4) The emergency remote pharmacy shall have a written contract or agreement with the home pharmacy which outlines the services to be provided and the responsibilities and accountabilities of the remote and home pharmacy in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations.

(5) The home pharmacy shall designate a pharmacist to serve as the pharmacist-in-charge of the emergency remote pharmacy.

(6) The emergency remote pharmacy shall comply with the rules for the class of pharmacy under which the home pharmacy is licensed. A Class A pharmacy shall comply with the rules under Subchapter B of this chapter titled Community Pharmacy (Class A). A Class C pharmacy shall comply with the rules under Subchapter D of this chapter titled Institutional Pharmacy (Class C). A Class D pharmacy shall comply with the rules under Subchapter E of this chapter titled Clinic Pharmacy (Class D).

(7) The records of services provided at the emergency remote pharmacy shall be maintained at the home pharmacy for a period of two years from the date of provision of the service. Such records shall be produced by the pharmacy within 48 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, Department of Public Safety, or Drug Enforcement Administration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy proposes amendments to §291.104, concerning Operational Standards. S.B. 410, passed

during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act authorizing the Board to establish additional standards for Class E (non-resident) pharmacies to meet in order to qualify for licensing as a pharmacy. The amendments, if adopted, establish additional standards for Class E pharmacies to meet in order to qualify for licensure as a pharmacy; clarify patient counseling requirements for Class E pharmacies; and implements changes made by H.B. 836 to Chapter 562 of the Texas Pharmacy Act during the 79th Regular Session of the Texas Legislature regarding generic substitution.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that Class E pharmacies meet specific requirements to qualify for licensing as a Class E pharmacy; provide patient counseling; and comply with generic substitution requirements. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §§551.002, 554.051, 560.052, and Chapter 562 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.052 as authorizing the agency to establish standards for Class E pharmacies to meet to qualify for licensing as a pharmacy. The Board interprets Chapter 562 of the Texas Pharmacy Act as authorizing the agency to adopt rules concerning the selection of generically equivalent drugs.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.104. Operational Standards.

(a) Licensing requirements.

(1) A Class E pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application) and provide the following additional information specified in §560.052(c) and (f) of the Act (relating to Qualifications):

(A) - (B) (No change.)

(C) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed by the applicant to a resident of this state not later than 72 hours after the time the board requests the record; ~~and~~

(D) an affidavit by the pharmacist-in-charge which states that the pharmacist has read and understands the laws and rules relating to a Class E pharmacy; ~~and~~

(E) proof of creditworthiness; and

(F) an inspection report issued not more than two years before the date the license application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(i) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(I) an individual approved by the Board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(II) an agent of the National Association of Boards of Pharmacy;

(III) an agent of another State Board of Pharmacy; or

(IV) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(ii) The inspection must be substantively equivalent to an inspection conducted by the Board.

(2) - (8) (No change.)

(9) A Class E pharmacy engaged in the centralized dispensing of prescription drug or medication orders shall comply with the provisions of §291.37 of this title (relating to Centralized Prescription Dispensing).

(10) ~~[(9)]~~ A Class E pharmacy engaged in central processing of prescription drug or medication orders shall comply with the provisions of §291.38 of this title (relating to Central ~~[Centralized]~~ Prescription or Medication Order Processing).

(11) ~~[(40)]~~ A Class E (Non-Resident) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.25 of this title (relating to Pharmacies Compounding Non-sterile Pharmaceuticals).

(12) ~~[(44)]~~ A Class E (Non-Resident) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.26 of this title (relating to Pharmacies Compounding Sterile Pharmaceuticals).

(b) Prescription dispensing and delivery.

(1) - (2) (No change.)

(3) Patient counseling and provision of drug information.

(A) (No change.)

(B) Such communication:

(i) ~~shall be provided with each new prescription drug order [; once yearly on maintenance medications; and if the pharmacist deems appropriate, with prescription drug order refills. (For the purposes of this clause, maintenance medications are defined as any medication the patient has taken for one year or longer)];~~

(ii) - (iii) (No change.)

(iv) ~~shall be reinforced with written information.~~
The following is applicable concerning this written information:

(I) Written information designed for the consumer, such as the USP DI patient information leaflets, shall be provided.

(II) - (III) (No change.)

(C) - (F) (No change.)

(G) Upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription and that a pharmacist is available to discuss the patient's prescription and provide information.

(H) [(G)] Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(c) Generic Substitution. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located:

(1) - (2) (No change.)

(3) The pharmacy must include on the prescription order form completed by the patient or the patient's agent information that clearly and conspicuously:

(A) states that if a less expensive generically equivalent drug is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug and the brand prescribed; and

(B) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or the brand prescribed.

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505431

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-8028



CHAPTER 295. PHARMACISTS

22 TAC §295.5, §295.7

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees and §295.7, concerning Pharmacist License Fees. S.B. 410, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act requiring the Board to collect a renewal fee, that is equal to one and one-half times the renewal fee, for a pharmacist license that has been expired for 90 days or less, and to collect a renewal fee, that is equal to two times the renewal fee, for a pharmacist license that has been expired for more than 90 days but less than one year. The amendments, if adopted, update the renewal fees required to renew an expired pharmacist license in accordance with amendments to §559.003 of the Texas Pharmacy Act and clarify the amount of the pharmacist license renewal fees.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for state or local government as

a result of enforcing or administering the rules. It is difficult to predict the number of pharmacist licenses that will be delinquent each year. However, based on the number of pharmacists paying a delinquent penalty in FY2004, the state may lose approximately \$5,000 each year in delinquent penalties because the penalty has been lowered for a pharmacist license that has been expired for 90 days or less.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the rules will ensure that pharmacist licenses that are not renewed and expire pay the appropriate renewal fees. Pharmacists required to pay a delinquent penalty will pay a lower delinquent penalty.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The amendments are proposed under §§551.002, 554.051, 559.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §559.003 as authorizing the agency to adopt rules regarding the renewal of a pharmacist license.

The statutes affected by these rules: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) (No change.)

(b) Initial License Fee.

(1) The fee for the initial license shall be \$203 ~~[\$228]~~ for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, \$554.006. ~~[is composed of the following:]~~

(2) In addition, the following fees shall be collected:

~~[(A) \$203 for processing the application and issuance of the pharmacist license as authorized by the Act, \$554.006;]~~

(A) [(B)] \$10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051; [and]

(B) [(C)] \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) [(D)] \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) [(2)] New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. ~~[The fee for biennial renewal of a pharmacist license shall be \$225 and is composed of the following:]~~

(1) The fee for biennial renewal of a pharmacist license shall be \$203 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006. [;]

(2) In addition, the following fees shall be collected: [\$10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;]

(A) \$10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

[(3) \$10 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and]

[(4) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.]

(d) - (e) (No change.)

§295.7. *Pharmacist License Renewal.*

For the purposes of the Act, Chapter 559, Subchapter A.

(1) - (2) (No change.)

(3) As specified in §559.003, if the completed application and renewal fee is not received on or before the last day of the assigned expiration month, the person's license to practice pharmacy shall expire. A person shall not practice pharmacy with an expired license. An expired license may be renewed according to the following schedule.

(A) If license has been expired for 90 days or less, the person may become licensed by making application and paying to the board a renewal fee that is equal to one and one-half times the renewal fee for the license as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees). [:]

[(i) the renewal fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); and]

[(ii) one-half of the examination fee as specified in §283.9 of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity).]

(B) If license has been expired for more than 90 days but less than one year, the person may become licensed by making application and paying to the board a renewal fee that is equal to two times the renewal fee for the license as specified in §295.5 of this title. [:]

[(i) the renewal fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); and]

[(ii) the examination fee as specified in §283.9 of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity).]

(C) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505432

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



22 TAC §295.6, §295.9

The Texas State Board of Pharmacy proposes new §295.6, concerning Emergency Temporary Pharmacist License and amendments to §295.9, concerning Inactive License. These rules were adopted by the Board on an emergency basis and became effective September 22, 2005. The publication as proposed rules will allow public comment on the emergency rules. The new rule §295.6, if adopted, provides procedures and requirements for the Board to grant a pharmacist who holds a license to practice pharmacy in another state an emergency temporary pharmacist license to practice in Texas. The amendments to §295.9, if adopted, provide procedures and requirements to allow Texas pharmacists whose licenses have been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the rules will ensure that pharmacists not previously licensed in Texas or pharmacists licensed in Texas with an inactive license may be needed on an emergency basis to provide pharmaceutical services when an emergency caused by natural or manmade disasters or any other exceptional situation causes an extraordinary demand for pharmaceutical services. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with these sections.

Comments on the proposed new rule and amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 20, 2006.

The new rule and amendments are proposed under §§551.002, 554.051, and 558.155 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.155 as authorizing the agency to issue temporary pharmacist licenses.

The statutes affected by these rules: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.6. Emergency Temporary Pharmacist License.

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Emergency situation--an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services.

(2) Sponsoring pharmacy--a pharmacy licensed by the Board in which the emergency temporary pharmacist will practice.

(3) State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(b) Emergency Temporary Pharmacist license. In an emergency situation, the board may grant a pharmacist who holds a license to practice pharmacy in another state an emergency temporary pharmacist license to practice in Texas. The following is applicable for the emergency temporary pharmacist license.

(1) An applicant for an emergency temporary pharmacist license under this section must:

(A) hold a current pharmacist license in another state and that license and other licenses held by the applicant in any other state may not be suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

(B) be sponsored by a pharmacy with an active license in Texas.

(2) To qualify for an emergency temporary pharmacist license, the applicant must submit an application including the following information:

(A) name, address, and phone number of the applicant;

(B) name and license number of the pharmacist-in-charge of the sponsoring pharmacy;

(C) name and license number of the sponsoring pharmacy; and

(D) any other information the required by the board.

(3) An emergency temporary pharmacist license shall be valid for a period as determined by the board not to exceed six months. The executive director of the board, in his/her discretion, may renew the license for an additional six months, if the emergency situation still exists.

(4) The board will notify the sponsoring pharmacy of the approval of an emergency temporary pharmacist license.

(c) Limitations on practice. A holder of an emergency temporary pharmacist license:

(1) may only practice in the sponsoring pharmacy; and

(2) must notify the board in writing, prior to beginning employment in another sponsoring pharmacy.

§295.9. *Inactive License.*

(a) - (b) (No change.)

(c) Reactivation of an inactive license.

(1) - (2) (No change.)

(3) In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services, the executive director of the board, in his/her discretion, may allow pharmacists whose license has been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education specified in paragraph (2) of this subsection, provided the pharmacist completes the continuing education requirement within six months of reactivation of the license. If the required continuing education is not provided within six months, the license shall return to an inactive status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505425

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-8028



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.3

The Texas Board of Physical Therapy Examiners proposes amendments to §322.3, concerning Supervision. The amendments address the supervisory responsibilities of a PT when he/she is supervising a PTA working in any off-site setting. The amendments add a requirement for conferences between the PT and the PTA, indicate events that must trigger a reevaluation of the patient by the PT, and define what a reevaluation must include.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Maline also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended rule will be increased oversight of physical therapy treatment for those patients receiving treatment primarily from a physical therapist assistant, due to the increased involvement of the supervising PT. The agency does expect that some small businesses will feel a financial impact. However, only those businesses which employ a high ratio of PTAs to PTs, i.e., where the PT may not treat or interact with the patient after the initial evaluation, will be affected. No economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by the amendments.

§322.3. *Supervision.*

(a) It is the responsibility of each PT and/or PTA to determine the number of PTAs and/or aides he or she can supervise safely.

(b) Supervision of PTAs.

(1) A supervising PT is responsible for and will participate in the patient's care.

(2) A supervising PT must be on call and readily available when physical therapy services are being provided.

(3) A PT may assign responsibilities to a PTA to provide physical therapy services, based on the PTA's training, that are within the scope of activities listed in §322.1, Provision of Services.

(4) When supervising the physical therapist assistant in any off-site setting, the following requirements must be observed:

(A) A physical therapist must be accessible by telecommunications to the physical therapist assistant at all times while the physical therapist assistant is treating patients/clients.

(B) There must be regularly scheduled and documented conferences with the physical therapist assistant regarding patients/clients, the frequency of which is determined by the needs of the patient/client and the needs of the physical therapist assistant.

(C) In those situations in which a physical therapist assistant is involved in the care of a patient/client, a reevaluation by the physical therapist will be made:

(i) Upon the physical therapist assistant's request for a reexamination, when a change in the plan of care is needed, prior to any planned discharge, and in response to a change in the patient's/client's medical status.

(ii) At least once every 30 days, or at a higher frequency when established by the physical therapist, in accordance with the needs of the patient/client.

(iii) A reevaluation must include:

(I) An on-site reexamination of the patient/client.

(II) On-site review of the plan of care with appropriate revision or termination.

(c) Supervision of physical therapy aides.

(1) A supervising PT or PTA is responsible for the supervision of, and the physical therapy services provided by, the PT aide.

(2) A PT or PTA must provide onsite supervision of a physical therapy aide, and remain within reasonable proximity during the aide's interaction with the patient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2005.

TRD-200505417

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-6900



CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, concerning Licensing Procedures for Foreign-trained Applicants. The amendments are in support of the establishment of national standards on foreign-trained credentials and education that will allow physical therapists educated in another country to transfer licensure from one state to another without undue expense or delay. Several amendments correct terminology and language; the substantive amendments delete a reference to the Application Review Committee, which no longer exists; add an exemption for license in country of education for those denied licensure in that country for citizenship reasons; establish the required scores for the new versions of the English language proficiency (TOEFL) tests, and establishing appropriate standards; waive the TOEFL test requirements for certain applicants, based on where they received their physical therapy education; require the use of the Federation of State Boards of Physical Therapy (FSBPT) Coursework Evaluation Tool; replace the word equivalent with the phrase "substantially equivalent"; create an exemption from English language proficiency score reports for foreign-trained applicants for licensure by endorsement, under specific circumstances, change numbers used in the formulas for in converting contact hours to US semester credit hours, and delete redundant information about temporary licenses.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the greater availability of therapists to treat the people of Texas, and the knowledge that the license requirements. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§329.5. *Licensing Procedures for Foreign-trained Applicants.*

(a) The provisions of §329.1 of this title (relating to General Licensing Procedure) apply to foreign-trained applicants.

(b) If required by §343 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act, the foreign-trained applicant must present a prescreening certificate issued by a board-approved prescreening entity. The board will establish by policy a list of board-approved prescreening entities, which will be made available to foreign-trained applicants on request.

(c) The foreign-trained applicant's educational credentials and qualifications will be evaluated by a board-approved credentialing entity in accordance with the requirements of subsection (f)(g) of this section. The board will establish by policy a list of approved credentialing entities [; which will be made available to the foreign-trained

~~applicant on request~~. In the event that the ~~credentialer~~~~[board-approved entity in an evaluation]~~ does not adhere to the guidelines of subsection ~~(f)~~~~(g)~~ of this section, the Board ~~[Applications Review Committee]~~ may override the evaluation. An evaluation by a board-approved education credentialing entity is valid for the purpose of licensing in this state for not more than two years after the date of issuance of the evaluation.

~~{(d)}~~ Following approval of all application materials, the foreign-trained applicant will be notified in writing that he or she has fulfilled all requirements for license by examination in Texas and is eligible for a temporary license. A temporary license may be issued under requirements set by §329.3 of this title (relating to Temporary License for Examination Candidates).~~;~~

~~(d)~~ ~~[(e)]~~ After arrival in the United States, the applicant must submit a United States residential address and pay all remaining fees. Only after the applicant has arrived in the United States will the board approve registration~~[register him or her]~~ for the national exam.

~~(e)~~ ~~[(f)]~~ Designated representative letter.

(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.

(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.

(3) A designated representative may obtain confidential information regarding the application.

(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.

(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

~~(f)~~ ~~[(g)]~~ Guidelines for board-approved education credentialing entities.

(1) The credentialing entity will review all of an applicant's post-secondary professional education credentials earned outside of the United States. The entity will evaluate allowable transfer credit for the 13th year based on recommendations of the National Council on the Evaluation of Educational Credentials or on current published reference materials. The applicant must have completed, with a passing grade of A, B, C, Pass or Credit, 60 semester hours credit or the equivalent in general education courses ~~[including courses in biological, social and physical sciences]~~ from an accredited institution of higher learning. This requirement may be met by credits earned at U.S. colleges or universities, by College Level Examination Program (CLEP) credits, or Advanced Placement (AP) according to standards of the American Council on Education. The number of credits earned by CLEP or AP may not exceed 12 semester credits.

(2) The credentialing entity must attest that the institution attended by the applicant has the recognition of the Ministry of Education or the equivalent in that country.

(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests. This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom. For graduates of entry-level physical therapy programs in other foreign countries, the Board may grant an exception to the TOEFL tests if the applicant holds a current license in physical therapy in another state and has been continuously licensed and in active practice in the US for 10 years prior to application. Regarding the Paper-based and Computer-based TOEFL tests: If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in Texas. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English. The Board may grant an exception to the TOEFL tests to an applicant who submits satisfactory proof that he/she is a citizen or lawful permanent resident of the United States, and has attended 4 or more years of secondary or post-secondary education in the U.S. Minimum acceptable scores for the tests are as follow:

(A) Paper based TOEFL tests (pbt): TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 55.

(B) Computer-based TOEFL tests (cbt): TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 55.

(C) Internet-based (ibt): Writing 24; Speaking 26; Reading Comprehension 18; Listening Comprehension 21.

{(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the following exams: Test of English as a Foreign Language (TOEFL); 580 (237 if computer-based test); Test of Written English (TWE); 5.0; Test of Spoken English (TSE); 55. If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in Texas. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English. The Board may grant an exception to the English language proficiency exams to an applicant who submits satisfactory proof that he/she is a citizen or lawful permanent resident of the United States, and has attended 4 or more years of secondary or post-secondary education in the U.S.]

(4) The credentialing entity must attest that the applicant is or was licensed or authorized to practice in the country in which the entry-level degree in physical therapy was granted. If there is no licensure or authorization in such country, the applicant must be eligible for unrestricted practice there. The Board may waive this requirement for an applicant who is not licensed in the country of education due to a citizenship requirement of that country.

(A) If the application is by examination, the license or authorization in such country must be in good standing and the licensure current.

(B) If the application is by endorsement, and the applicant has passed the exam according to Texas standards, the license or other authorization must have been in good standing at the time the license or authorization in such country expired.

(5) The credentialing entity adopts the policy of "scaling" as defined by the National Council on the Evaluation of Foreign Educational Credentials, American Association of Collegiate Registrar and Admissions Officers, Washington D.C.; i.e., a year of foreign study is worth no more than a year of American study, regardless of contact hours, or general education is converted to equate to approximately 30-32 United States semester credit hours per year, and professional education to approximately 36 semester credit hours per year.

(6) The credentialing entity must use a method to convert classroom hours to semester units which has a ratio no greater than the following: 15 contact lecture hours = one semester unit/hour; 45[55] contact laboratory hours = one semester unit/hour. When lecture/lab hours are not delineated on the transcript or syllabi, the evaluator may use an appropriate ratio and indicate the ratio used in the evaluation.

(7) The credentialing entity must list and assign a grade for each course taken by the applicant, by assigning the grade of A, B, C, D, F, Pass, Fail, Credit or No Credit. Those grades assigned by the credentialing entity must be the grades that are converted to the U.S. equivalent, in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. The credentialing entity must identify and list those courses which would not transfer to the U.S. as a C or above or Pass or Credit in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. An applicant must earn a grade of A, B, C, or Pass or Credit in any professional physical therapy education courses. An applicant with a grade of D, F, Fail, or no credit appearing for a professional physical therapy education course on his/her evaluation who has not successfully retaken the course with a grade of A, B, C, Pass or Credit is not eligible for licensure in Texas.

(8) The credentialing entity must attest that the applicant has successfully completed an educational program substantially equivalent to U.S. programs accredited by the Commission on Accreditation in [of] Physical Therapy Education (CAPTE) and has earned the equivalent of a minimum of 72 semester hours of professional physical therapy education. The applicant must have completed courses in each of the broad following areas: basic sciences, clinical science, and physical therapy theory and procedures. The applicant must have also successfully completed United States required equivalent courses/hours [(no less than eight and will receive credit for no more than 15 U.S. semester credit hours at the Upper Division Level)] in clinical education. The applicant must have successfully completed at least 15 semester credit hours in clinical education (upper division level) but will receive credit for no more than 23 semester hours. If the applicant has completed the required course work in clinical education but the transcript does not reflect the required credit hours then the credentialing entity may use the conversion formula of 60 [55] contact hours per one semester credit.

[(9) The credentialing entity must certify that the program awards a degree equivalent in level and purpose to the degree awarded by regionally accredited colleges and universities in the United States. If the degree is granted on or before December 31, 2002, it must be equivalent to at least a baccalaureate degree awarded by a CAPTE-accredited program. If the degree is granted on January 1, 2003 or

later, the degree awarded must be equivalent to a post-baccalaureate degree awarded by a CAPTE-accredited program.]

(9) [(40)] If the degree awarded is substantially equivalent to a degree in physical therapy [Physical Therapy] as awarded by CAPTE-accredited programs in regionally accredited colleges and universities in the United States, the credentialing entity must use one version of the Coursework Evaluation Tool for Foreign Educated Physical Therapists (Coursework Evaluation Tool) developed by the Federation of State Boards of Physical Therapy when evaluating [the approved evaluation checklist when considering] an applicant's credentials. The version of the tool used must correspond to the year the entry-level degree was awarded. Deficiencies must be identified and must show the subjects and credit hours necessary to satisfy the requirements of the Coursework Evaluation Tool [evaluation checklist]. If the degree received is from a CAPTE-accredited program located outside the US, the program is considered equivalent to a domestic CAPTE-accredited physical therapy [Physical Therapy] program, and the applicant is exempt from meeting the requirements of the Coursework Evaluation Tool [evaluation checklist].

(10) [(41)] The credentialing entity must submit to the board the resumes of any and all credential analysts and the physical therapy consultants involved in the evaluation of foreign-trained applicants for licensure in Texas. This must be submitted to the council at least 30 days prior to any analysis performed by that person.

(11) [(42)] The credentialing entity must submit to the board a board-approved form, properly signed and notarized, in which it agrees to use the board's guidelines and the Coursework Evaluation Tool to evaluate transcripts of applicants seeking licensure in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2005.

TRD-200505415

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-6900



CHAPTER 341. LICENSE RENEWAL

22 TAC §341.5

The Texas Board of Physical Therapy Examiners proposes an amendment to §341.5, concerning Waiver of Continuing Education Units (CEUs). The amendment puts into rule existing policy that a request for a waiver from the Continuing Education requirement for medical hardship reasons must be submitted prior to the licensee's license expiration date to be considered by the Board.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Maline also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be clearer directions to licensees. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§341.5. Waiver of Continuing Education Units (CEUs).

CEUs required for renewal of a license may be waived by the board because of hardship for health and medical problems that prevent a licensee from obtaining the CEUs. Waiver requests must be submitted prior to license expiration. The license cannot be renewed until the waiver has been approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2005.

TRD-200505416

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 305-6900



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 31. NUTRITION SERVICES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§31.11, 31.12, 31.21 - 31.23, 31.25 - 31.37 and the repeal of §31.24, concerning the Farmers' Market Nutrition Program (FMNP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 31.11 and 31.12 relating to FMNP and §§31.21 - 31.23 and §§31.25 - 31.37 relating to WIC have been reviewed, and the department has determined

that reasons for adopting the sections continue to exist in that rules on these subjects are needed. However, the rules require revision as described in this preamble. Section 31.24 has been reviewed and the department has determined that reasons for adopting the section no longer continue to exist.

Under federal and state enabling legislation, the WIC Program is funded entirely by a combination of federal grant funds and by rebates from manufacturers of infant formula and infant cereal that can only be expended to defray WIC food costs. The FMNP is funded by a federal grant and a 30% state match for the administrative portion of the federal grant. The United States Department of Agriculture (USDA) awards federal grant funds to the department to administer the programs, provided the department does so in accordance with federal law and regulations and in accordance with the department's annual submission of a state plan approved by USDA. USDA deems the following types of changes to be substantive amendments to the state plan that require federal approval: rule or policy changes initiated by legislation, USDA, or the state agency; changes affecting client or vendor services and benefits; changes in the monitoring/oversight of vendors and local agencies; any other operational changes aimed at improving or enhancing program delivery or accountability; and changes in related State procedures.

Amendments to these rules are proposed primarily to comply with provisions governing the WIC program in Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004. In addition, these amendments implement the federal 2005 Consolidated Appropriations Act that prohibits the allocation of administrative funds to state agencies operating WIC programs that authorize any new vendors if it is expected that more than 50 percent of the vendors' annual revenue from food sales will be from WIC sales. USDA has informed the department that it expects that the same prohibition will be included in the 2006 appropriations act.

The department is also amending the rules to conform to the recent changes in department's structure and related terminology, and to improve clarity and consistency in existing language.

SECTION-BY-SECTION SUMMARY

The amendments to §31.11 add definitions of a WIC "local agency" and the "WIC Program", reflect changes in departmental structure and related terminology, and add the citation for Agriculture Code, Chapter 15, which authorizes the department to administer the FMNP.

The amendments to §31.12 add information concerning the design, printing, and denominations of FMNP food coupons; the procedure for the delivery of coupons to recipients; and the procedure for the redemption of coupons by sellers of the produce, as required by Agriculture Code, §15.005. Because §§31.12(b) - (c) and 31.12(e) - (g) relate to internal administration by the department of FMNP agreements and claims for reimbursement, these subsections are being deleted and placed in program policy.

The amendments to §31.21 add, delete, and amend definitions primarily to improve the clarity of the section, to conform the definitions to current department structure and related terminology, and to comply with Public Law 108 - 265 that revised the definitions of WIC "nutrition education" and "supplemental foods". The new definition of "predominantly-WIC vendor" implements the recent federal requirement that the department identify stores in which WIC sales total, or are expected to total, more than 50 percent of food sales. The definition of "WIC-only store" has

been deleted because the new definition of "predominantly-WIC vendor" also includes vendors that sell only WIC foods. A definition of "full-line grocery store" also has been added to facilitate comparisons with "predominantly-WIC vendors." A definition of "pharmacy" was added because the department proposes to exercise the option allowed in federal law to exempt a pharmacy that chooses to provide only exempt infant formula from classification as a "predominantly-WIC vendor." Definitions of "primary contract brand infant formula," "exempt infant formula," and "vendor" have been added to conform to the definitions in federal law and in the regulations governing the program at 7 Code of Federal Regulations (CFR) Part 246.

The amendments to §31.22, regarding WIC Program recipient eligibility, delete definitions of "income" and permissible exclusions from income that merely duplicate WIC federal regulations, and add a citation to the federal regulations. An amendment to §31.22 also clarifies that in some situations WIC applicants may be required to present additional documentation of income to ensure that an applicant's total income can be assessed accurately. Since §31.22(b) states unequivocally that citizenship is not an eligibility requirement for WIC, §31.22(b)(1) - (3) have been deleted as unnecessary.

The amendments to §31.23, regarding recipients of WIC supplemental food benefits, delete the restrictions concerning the number of months of food benefits a proxy designated by a WIC recipient will receive because these restrictions will no longer be necessary in an electronic benefits transfer system, currently being piloted by the program. The amendment also removes the restriction on proxies assisting residents of homeless shelters, institutions, and other temporary shelters to allow personnel at those entities to assist more than one shelter resident at a time by picking up food benefits at the WIC office and obtaining food benefits from vendors. However the amendment adds language that WIC clients must be encouraged and allowed to participate in the process of picking up and transacting food instruments to the greatest extent possible within the institutional framework and that WIC clients must receive their food benefits at the same time as they receive notice of eligibility as required by the federal regulations governing the program.

Section 31.24, regarding provision of immunizations to WIC applicants and recipients, is being repealed as unnecessary and/or duplicative, because each of the contracts between the department and the WIC service delivery providers includes performance standards concerning provision of immunizations free of charge or referrals to local immunization providers.

The amendment to §31.25, regarding WIC recipients' certification periods, specifies enrollment and certification procedures for receiving benefits.

The amendments to §§31.26 - 31.28 delete redundant information and make minor nonsubstantive changes to the rules to improve clarity.

The amendments to §31.29 delete the term "suspension", which is no longer current terminology, and conform the rule to the department's fair hearing procedures.

The amendments to §31.30, regarding WIC participant fraud and abuse, align the department's rules with the creation of the Department of State Health Services and the Office of the Inspector General, Health and Human Services Commission.

Section 31.31, relating to selection of WIC service delivery contractors, has been amended by deletion of the detailed criteria

and procedures used to rank WIC Program service areas according to relative need. The ranking criteria have been deleted because they concern internal administrative procedures, rather than policies that affect the public. The department will continue to use the criteria to rank service areas' relative need, and deletion of the ranking criteria will afford the department more flexibility to use other kinds of emerging census and health data. Section 31.31 also has been amended by deletion of the criteria for evaluation of proposals by local agencies to become service providers because these specific evaluation criteria are provided to the public in each request for proposal published by the department. Deletion of the evaluation criteria from the section will enable the department to consider and publish other and/or additional criteria as the needs of the department may change.

The amendments to §31.32, relating to the initial selection of vendors for participation in the WIC program, are necessary to comply with provisions of the Child Nutrition and WIC Reauthorization Act of 2004, and the federal fiscal year 2005 Appropriations Act. Specifically, both acts address the proliferation of stores that sell only WIC-authorized food products and data that confirms many of these stores charge higher prices on average than other retail full-line grocery stores. The Child Nutrition and WIC Reauthorization Act requires the program to identify vendor outlets in which WIC sales account for more than 50 percent of total food sales, and to ensure the prices these vendors charge are competitive with prices charged by vendors operating full-line grocery stores by December 30, 2005. The 2005 Appropriations Act prohibits the allocation of administrative funds to states that authorize any new vendors if it is expected that more than 50 percent of a vendor's annual revenue from food sales will be from WIC sales, unless denial of the vendor's authorization would result in inadequate participant access to WIC services.

The amendments to §31.32 are intended not to eliminate currently authorized "predominantly-WIC" vendors, but to ensure such stores' prices are more competitive with full-line grocery stores. In compliance with federal law, the department seeks to maximize federal WIC grant funds so the WIC program can serve the maximum number of eligible women, infants, and children. In an effort to encourage submission of only complete applications, §31.32(a) has been amended to state that unless a written request for evaluation including the vendor's name, address, contact person, and phone number; the vendor's valid Food Stamp Program authorization number unless the vendor is applying for authorization only to transact exempt infant formula; and a written declaration of the percentage of total food sales expected to be derived from WIC sales must be received and verified before the remainder of a vendor's application for participation in the program will be evaluated. Section 31.32(b) has been amended to authorize the department to disapprove an authorization request if the vendor is not ready at the time the department or contractor staff physically visits the vendor for an on-site evaluation at the mutually agreed upon time. Section 31.32(c) has been amended to add documentation of a current Food Stamp authorization; a declaration that no more than 50% of the vendor's expected sales will be derived from WIC sales; and that the vendor must offer a variety of foods other than WIC foods to the existing criteria required for vendor authorization. An exception to the Food Stamp authorization and the requirement that vendors that elect to provide only exempt infant formula must offer a variety of non-WIC foods was added. Minor changes to the quantities of WIC foods a vendor must stock were made to ensure that a vendor stocks the minimum quantities of milk and infant formula to serve a WIC family adequately. The require-

ment that all vendors operate at a fixed location was amended to eliminate an exception for mobile stores, because no mobile stores are currently operating in the State, and the program has determined that the exception is no longer necessary for client access in rural areas. The options of tentative authorization for a vendor to redeem WIC food instruments and temporary approval of a vendor's application were deleted in §31.32(h) - (i) because USDA requires that all vendors must undergo an on-site evaluation prior to authorization. New §31.32(k) implements provisions of the Child Nutrition and WIC Reauthorization Act of 2004 concerning vendors who fail to comply with the expectation upon initial authorization that no more than 50% of the vendor's food sales would be derived from WIC sales. Section 31.32(k)(1) and (2) authorize the department to reassess the vendor after four months and to terminate the vendor agreement if the assessment documents that more than 50% of the vendor's food sales during that period were derived from WIC sales. Other amendments to §31.32 are minor wording changes intended to enhance the clarity and integrity of the authorization process.

Amendments to §31.33, regarding reauthorization of WIC vendors for participation, delete the detailed criteria applicable to the department's consideration of a vendor's application for reauthorization. The department will relocate and centralize all the evaluation criteria in WIC policy, and each vendor agrees to comply with all applicable WIC policies by executing the vendor agreement. Since these criteria for reauthorization of vendor agreements affect only those persons who choose to contract with the department, and not the general public, these provisions need not be adopted and enforced as rules.

The amendments to §31.34, regarding the calculation of WIC vendor competitive pricing data, enable the department to implement administrative procedures authorized by the Child Nutrition and WIC Reauthorization Act of 2004, such as exempting pharmacies that elect to sell only WIC exempt infant formula and no other authorized WIC foods from the competitive pricing criteria applicable to full-line grocers.

In an effort to assure that vendors cannot easily avoid sanctions for program violations, amendments to §31.35 allow more than one outlet to be included in the vendor agreement, but require the vendor to reapply for reauthorization upon cessation of operations at any outlet if the vendor attempts to relocate, unless the reason for relocation is due to circumstances beyond their control, such as loss of a lease, or to enhance the quality or access to services available to WIC clients. Except for the stated exceptions, reapplication is necessary in order to ensure the new store meets all the original authorization criteria.

Section 31.36, regarding the right of a local agency or vendor to appeal, has been amended to clarify the date by which the state agency must receive a request for a hearing from a local agency or a vendor.

The amendments to §31.37, regarding the WIC Program's criteria for selection of allowable foods, add low fat evaporated milk as a milk type, and canned peas and lentils as foods that may be authorized for the homeless.

FISCAL NOTE

Mike Montgomery, Director, Nutrition Services Section, has determined that for each calendar year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed. All activities required by the amendments will be performed by existing department staff and with

existing funding. The amendments to §31.32 adding criteria for initial and ongoing authorization of a vendor to participate in the WIC Program implement the strong cost-containment measures mandated by Public Law 108 - 265, ensuring that WIC food costs and payments to vendors are consistent with competitive retail prices for WIC foods. Although some vendors may choose to reduce the prices they charge the WIC program for allowable foods, total federal grant dollars available to the department will not increase. Savings resulting from lower prices charged by some vendors will only enable the department to serve additional recipients.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Montgomery has also determined that there may be economic costs to small businesses, micro-businesses, and persons (other businesses) who are required to comply with the sections as proposed. However, no small businesses, micro-businesses, or persons are required to comply with these sections as amended in order to operate a retail grocery businesses. Some of the vendors authorized to participate in WIC program may be classified as small businesses or micro-businesses. Among those vendors, some may lower their prices in order to be authorized or to continue to be authorized. However, the probable economic cost to these businesses cannot be quantified because the number of such businesses, if any, that will find it necessary to lower prices for WIC foods cannot be estimated. Nor can the dollar amounts of any price reductions for WIC foods be estimated because price comparison bands vary across the state. There are no anticipated economic costs to persons, including service delivery contractors, WIC applicants, and WIC recipients because none will be required to alter their practices or actions in order to comply with the sections. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Montgomery has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be assurance that federal funds will be utilized more cost-effectively to deliver services to WIC recipients.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and repeal do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Valerie Wolfe, Nutrition Services Section, Division of Family and Community Health, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7444 or by email to Valerie.Wolfe@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING In addition, a public hearing to receive comments on the proposal is scheduled for Monday, December 12, 2005, from 9:00 a.m. to 11:00 a.m. at the Department of State Health Services, Room M-653, 1100 West 49th Street, Austin, Texas 78756. Contact: Valerie Wolfe at 512/458-7444.

LEGAL AUTHORITY

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER B. FARMERS' MARKET NUTRITION PROGRAM

25 TAC §31.11, §31.12

STATUTORY AUTHORITY

The amendments are authorized under Agriculture Code, §15.005, which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the Farmers' Market Nutrition Program. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also authorize the executive commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect Health and Safety Code, Chapter 1001; Government Code, Chapter 531; and Agriculture Code, Chapter 15.

§31.11. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Farmers' market agreement--The formal and legally binding agreement between the Department of State Health Services [Texas Department of Health] and a vendor authorized to accept and redeem WIC Farmers' Market Nutrition Program coupons.

(5) Farmers' market nutrition program--Section 17 of the Child Nutrition Act of 1966, as amended, authorizes the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Subsection 17(m) of the Child Nutrition Act, as amended, authorizes the Farmers' Market Nutrition Program. Chapter 15, Agriculture Code, authorizes the Department of State Health Services to administer the Farmers' Market Nutrition Program in Texas.

(6) Local agency--An entity under contract to the State agency to provide Farmers' Market Nutrition Program services or a Department of State Health Services health services region that provides Farmers' Market Nutrition Program services.

(7) [(6)] State agency--The Department of State Health Services [Texas Department of Health] in its role as administrator of the WIC and Farmers' Market Nutrition Programs [Program].

(8) WIC Program--The Special Supplemental Nutrition Program for Women, Infants, and Children.

§31.12. Program Administration. [Farmers' Market Nutrition Agreement with the State Agency.]

(a) The state agency shall determine the design, printing, and denominations of the food coupons used in the Farmers' Market Nutrition Program (FMNP) in accordance with federal regulations at 7 CFR Part 248.

(1) The design of the food coupons shall be uniform across the state and shall include, at a minimum, the following information:

(A) the last date, not later than November 30 of each year, the recipient may use the coupon;

(B) a time frame within which farmers' market associations must submit coupons for payment;

(C) a unique, sequential serial number;

(D) a denomination (dollar amount); and

(E) a place the unique identifier of the farmer who sold the food may be added.

(2) Either the state or local agencies may print coupons. Local agencies shall utilize software provided by the State agency for uniformity.

(3) The combined value of all the coupons issued to each recipient or household shall be not less than \$10 and not more than \$30 per year. The state agency shall determine the denominations of food coupons each year based on the funds available to support the program.

(b) Food coupons shall be issued to women and children certified as eligible for the WIC Program and who receive WIC food benefits during the months of March through August at local agencies that contract with the state agency to operate the FMNP.

(1) Recipients must present their WIC identification cards to receive FMNP coupons.

(2) Recipients shall receive written information on the program including:

(A) a list of authorized markets at which coupons may be redeemed;

(B) a harvest schedule listing the dates fresh fruits and vegetables are expected to be available in the community during the months the coupons are valid;

(C) instructions stating that:

(i) coupons shall be countersigned only at the time the coupons are redeemed;

(ii) lost coupons will not be replaced; and

(D) notification that no cash change will be given if coupons are redeemed for less than their face value. Local agencies shall also notify recipients verbally that cash change will not be provided when coupons are redeemed for less than their face value.

(c) Farmers' market associations shall submit requests for payment to the state agency.

(1) Each farmers' market association shall submit at least one claim form (a State of Texas Purchase Voucher) to the state agency each month. Claim forms may be submitted more frequently if necessary.

(2) A redemption list detailing the individual farmer identification numbers and amounts of coupons redeemed by each farmer shall be included with each voucher/claim form.

(3) The state agency shall provide a handbook for farmers and farmers' market associations describing the process for submission of coupons for payment.

(d) [(a)] Once a farmers' market association has been approved to participate in the Farmers' Market Nutrition Program, a written farmers' market agreement shall be prepared and signed by authorized officials of the state agency and the farmers' market association. Upon receipt by the farmers' market association of the executed and signed agreement, the association and its members may begin accepting coupons.

[(b)] The agreement shall be prepared by the state agency and submitted to the farmers' market associations for endorsement.]

(e) Upon receipt, an official of the farmers' market association shall enter the association's name, address, telephone number, federal income tax number, and State of Texas Comptroller number, and shall sign the agreement on behalf of the association.]

(c) [(d)] The farmers' market association shall complete and execute a FMNP Farmer's Profile and Agreement [an agreement] for each member farmer who will be redeeming Farmers' Market Nutrition Program coupons. On the agreement, the association shall assign a unique four digit outlet number to each farmer and shall provide each farmer's mailing address, street address (if different), home and work phone numbers, [and] social security number, fax number, and e-mail address. The agreement shall be signed and dated by each farmer and the association official.

[(e)] The completed association agreement and the farmer agreements shall be returned to the state agency.]

[(f)] The state agency shall assign each farmers' market association a four-digit account number and shall record it upon the agreement between the department and the association.]

[(g)] After the agreement is signed by the state agency official, one copy shall be forwarded to the association and another copy sent to the WIC local agency affected. The original document shall be retained by the state agency.]

(f) [(h)] If farmers join an association after the association's agreement has been executed, the association shall complete and submit a farmer agreement for each new member farmer to the state agency.

(g) [(i)] If a farmer ceases to be a member of an association, the association shall notify the state agency that the farmer will no longer be redeeming Farmers' Market Nutrition Program coupons through that association.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505488

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 8, 2006

For further information, please call: (512) 458-7236

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SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

25 TAC §§31.21 - 31.23, 31.25 - 31.37

STATUTORY AUTHORITY

The amendments are authorized under Agriculture Code, §15.005, which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the Farmers' Market Nutrition Program. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also authorize the executive commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect Health and Safety Code, Chapter 1001; Government Code, Chapter 531; and Agriculture Code, Chapter 15.

§31.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Certifying [Competent professional] authority--An individual on the staff of the local agency authorized to determine nutritional risk, [and] prescribe supplemental foods, and determine eligibility of a WIC applicant.

(11) - (13) (No change.)

(14) Exempt infant formula--An infant formula that meets the requirements for an exempt infant formula under §412(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107.

(15) [(14)] Family--A group of related or non-related individuals who are living together as one economic unit, except that residents of a homeless facility or institution shall not be considered members of a single family.

[(15)] Federal fiscal year--The 12-month period beginning October 1 of any calendar year and ending September 30 of the following calendar year.]

(16) Food instrument--A voucher, check, electronic benefits transfer card (EBT), coupon, or other document that [which] is used by a participant to obtain supplemental foods.

(17) Full-line grocery store--A vendor that sells a variety of food products in each of the following four food groups on a continuous basis, in addition to the foods authorized by the WIC Program: meats, poultry or fish; bread or cereal; vegetables or fruits; and dairy. "Continuous basis" means that on any given day of operation, a store offers for sale and normally displays in a public area no fewer than three different varieties of food items in each of the four food groups. A full-line grocery store may elect not to sell infant formula.

(18) [(17)] Guardian--An individual legally appointed and responsible to look after the affairs of a minor.

(19) [(48)] Homeless facility--A facility which provides meal service and is a supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

(20) [(49)] Homeless individual--A woman, infant, or child who lacks a fixed and regular nighttime residence; or whose primary nighttime residence is: a supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; a temporary accommodation in the residence of another individual not exceeding 365 days; or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

(21) [(20)] Infant--A person under one year of age.

(22) [(24)] Income--Gross income before deductions or net income after business deductions for farm or self-employed individuals.

(23) [(22)] Individual with disabilities--A person who has a physical or mental impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment. Major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(24) [(23)] Instream migrant farmworker--A migrant farmworker who follows a route or travels from state to state seeking agricultural work and is not currently at his or her home base.

(25) [(24)] Licensed wholesaler or distributor--A business licensed in accordance with the Health and Safety Code, Chapter 431, the Texas Food, Drug, and Cosmetic Act, and Chapter 229 of this title (relating to Food and Drug).

(26) [(25)] Local agency--An entity under contract to the State agency to provide WIC Program nutrition services or a health services region that provides WIC nutrition services.

(27) [(26)] Migrant farmworker--An individual whose principle employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purpose of such employment, a temporary abode.

(28) [(27)] Minor--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(29) [(28)] Newborn infant--An infant less than one month of age.

[(29)] Nonprofit agency--A private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.]

(30) Nutrition education--A benefit offered to WIC Program participants which consists of individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary and physical activity habits, and emphasize the relationships between nutrition, physical activity, and health, all in keeping with the individual's personal[; and cultural[; and socioeconomic] preferences.

(31) - (35) (No change.)

(36) Pharmacy--A facility at which a prescription drug or medication order is received, processed, or dispensed under this Subtitle J, Occupations Code; Chapter 481 or 483, Health and Safety Code; or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

(37) [(36)] Postpartum woman--A woman up to six months after termination of pregnancy.

(38) [(37)] Poverty income guidelines--The poverty income guidelines prescribed annually by the Food and Nutrition Service Agency of the United States Department of Agriculture based on the revised poverty income guidelines issued annually [and adjusted annually] by the United States Department of Health and Human Services[; effective July 1 of each year].

(39) Predominantly-WIC vendor--A vendor outlet that has, or expects to have:

(A) WIC food sales that exceed sales of foods purchased with benefits issued by the Food Stamp Program; or

(B) WIC food sales that exceed 50% of the outlet's total sales of foods that are eligible for purchase using benefits issued by the Food Stamp Program.

(40) [(38)] Pregnant woman--A woman determined to have one or more embryos or fetuses in utero.

(41) [(39)] Price region--One or more geographic areas such as counties or zip codes with reasonably similar pricing of WIC-authorized foods grouped together for establishing vendor comparison groupings. Such areas may or may not be contiguous.

(42) Primary contract brand infant formula--The specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under 42 United States Code, §1786, and for which a contract is awarded by the State agency as a result of that bid.

(43) [(40)] Proxy--Any person 16 years of age or older designated by a woman participant, or by a parent, guardian, or caretaker of an infant or child participant, to obtain and transact food instruments or to obtain supplemental foods on behalf of a participant. In certain circumstances, a proxy may be appointed by the state agency to transact food instruments for an infant, child, or participant under age 18 who is subject to disqualification but who would be at nutritional risk if benefits were terminated.

(44) [(41)] Regulations--United States Department of Agriculture regulations, 7 CFR Part 246.

(45) [(42)] Separate economic unit--A group of individuals who indicate that they have a source of income adequate to sustain the unit and usually purchase and prepare food separately from other individuals dwelling in the same household, or a group of individuals who intend to purchase and prepare food separately from other individuals dwelling in the same household after being certified as eligible to receive benefits from the WIC Program.

(46) [(43)] Shelf price--The price normally charged all customers by a vendor for an item sold by the vendor.

(47) [(44)] State agency--The Department of State Health Services [Texas Department of Health] in its role as administrator of the WIC Program.

(48) [(45)] Supplemental foods--Those foods containing nutrients determined by nutritional research to be lacking in the diets of [to be beneficial for] pregnant, breastfeeding, or postpartum women,

infants, and children and foods that promote the health of the population served by the WIC Program as indicated by relevant nutrition science, public health concerns, and cultural eating patterns as prescribed by the United States Secretary of Agriculture.

(49) [(46)] United States Department of Agriculture (USDA)--The federal agency which funds the WIC Program.

(50) Vendor--A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state agency to provide authorized supplemental foods to participants under a retail food delivery system.

(51) [(47)] Vendor account--A vendor approved by the state agency with one or more vendor outlets.

(52) [(48)] Vendor agreement--The formal and legally binding agreement between the Department of State Health Services [Texas Department of Health] and a vendor authorized to accept and redeem WIC Program food instruments and that may include one or more authorized store locations under the same agreement.

(53) [(49)] Vendor band--A comparison group of WIC Program vendors based on similar characteristics such as monthly WIC sales volume for each [account or] outlet, store size, location, number of checkout lanes, or store type.

(54) [(50)] Vendor competitive pricing--The process of comparing a vendor outlet's average costs of [the cost of a standard] WIC Program food packages [package] for a woman, infant, and/or [or] child to the average food package costs [at an outlet to the cost of an average standard food package] for the price region assigned by the state agency [where the vendor is located. Vendor accounts or outlets with similar characteristics are compared within the same price region].

(55) [(51)] Vendor interactive training--A training session for vendors that includes a contemporaneous opportunity for questions and answers.

(56) [(52)] Vendor outlet--An individual store which operates and transacts WIC food instruments at a fixed location recognized by the U.S. postal system as an address, has an electric utility hook-up, is a store structure situated on a cement or pier-and-beam foundation, is not used simultaneously as a residence, has a minimum business area of 500 square feet, has clearly identifying signage that matches the vendor outlet name listed on the WIC Vendor Profile Application, and is walk-in accessible directly from the street or parking lot.

(57) [(53)] Verbal abuse--The verbal threat of physical abuse of local agency, state agency or vendor staff by a participant or a parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant. Rude, vulgar, or generally abusive language is not verbal abuse.

[(54) WIC-only store--A vendor outlet that primarily transacts WIC food instruments or transacts WIC food instruments totaling a sales volume greater than its Food Stamp Program sales volume or is not authorized by the Food Stamp Program.]

(58) [(55)] WIC program--The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by the Child Nutrition Act of 1966, §17, as amended.

(59) [(56)] WIC Vendor Profile Application--A form which includes demographic, financial, and other descriptive information for each vendor outlet.

§31.22. Recipient Eligibility Requirements.

(a) An individual shall be eligible to receive services when the individual receives local agency approval after meeting all of the following requirements.

(1) - (2) (No change.)

(3) Meet the income requirements as follows:

(A) (No change.)

(B) Applicants shall provide documentation of the amount of current income received by each member of the family or separate economic unit within a family at each certification and subsequent certification as authorized by federal WIC regulations at 7 CFR §246.7 [except as provided in this subsection].

[(C) Income includes the following:]

[(i) wages; salary; commissions; or fees;]

[(ii) net income from farm and non-farm self-employment;]

[(iii) Social Security benefits;]

[(iv) dividends or interest on savings or bonds, to include interest on certificates of deposit (CD) and Individual Retirement Accounts (IRA); income from estates or trusts; or net rental income;]

[(v) public assistance or welfare payments;]

[(vi) unemployment compensation;]

[(vii) government civilian employee or military retirement or pensions, or veterans' payments;]

[(viii) private pensions or annuities;]

[(ix) alimony or child support payments;]

[(x) regular contributions from persons not living in the household;]

[(xi) net royalties;]

[(xii) lump sum payments which are considered as "new money" received in the last 12 months would include but are not limited to gifts, inheritances, lottery winnings, worker's compensation for lost income, and severance pay;]

[(xiii) student financial assistance, such as grants and scholarships, except those grants and scholarships excluded as income as listed in this section;]

[(xiv) capital gains and interest earned on the sale amount. If there was a loss on the sale, the amount of interest earned on the sale amount is counted as income. This applies only to capital gains and losses within the past 12 months. Gains from any sale prior to last 12 months shall be computed according to clause (iv) of this subparagraph; and]

[(xv) other cash income, which includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family;]

[(D) Exclusions from income include, but are not limited to, the following:]

[(i) any basic allowance for quarters received by military personnel residing off military installations;]

[(ii) the value of inkind housing and other inkind benefits, including, but not limited to, the employer-paid or union-paid portion of health insurance premiums or other employee fringe benefits, food, or housing received in lieu of wages;]

[(iii)] lump sum payments classified as "reimbursement," such as monies received from insurance companies for loss or damage to real or personal property, such as a home or auto, and payments received from a third party to pay for a specific expense such as medical bills resulting from accident or injury;]

[(iv)] operating expenses for those individuals who are self-employed. For farm income, operating expenses include, but are not limited to, cost of feed, fertilizer, seed, and other farming supplies; cash wages paid to farmhands; depreciation; cash rent; interest on farm mortgages; farm building repairs; and property taxes (but not state and federal income taxes). For nonfarm self-employed persons, operating expenses include, but are not limited to, the cost of goods purchased, rent, heat, utilities, depreciation, wages and salaries paid, and business taxes (but not personal income taxes). Applicants shall complete a WIC Program affidavit or provide written business records;]

[(v)] loans, such as bank loans, which are temporarily available but must be repaid;]

[(vi)] payments or benefits provided under certain federal programs or acts which must be excluded by federal law include, but are not limited to the following: reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973, to the extent excluded by that Act; payment to volunteers under the Small Business Act (SCORE and ACE), §8(b)(1)(B); income derived from certain sub-marginal land of the United States which is held in trust for certain Indian tribes; payments received under the Job Training Partnership Act; income derived from the disposition of funds to the Grand River Band of Ottawa Indians; payments received under the Alaska Native Claims Settlement Act; the value of assistance to children or their families under the National School Lunch Act, as amended; the Child Nutrition Act of 1966; and the Food Stamp Act of 1977; payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation; payments to the Passamaquoddy Tribe and Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980; payments under the Low-Income Home Energy Assistance Act, as amended; student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, including any assistance received from these programs used for tuition and fees, the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study, and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending a higher education institution on at least a half-time basis, as determined by the institution, but not including room and board and dependent care expenses; payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989; payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Educational Act Amendments of 1990; payments pursuant to the Agent Orange Compensation Exclusion Act; payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988; value of any child care payments made under the Social Security Act, §402(g)(1)(E), as amended by the Family Support Act; value of any "at-risk" block grant child care payments made under Public Law 101-508, §5081; value of any child care provided or paid for under the Child Care and Development

Block Grant Act, as amended; mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended; payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of \$2000; payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80% of the median income of the area; payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50% of the median income of the area; payments received under the Sac and Fox Indian claims agreement; payments received under the Judgment Award Authorization Act, as amended; payments for the relocation assistance of members of Navajo and Hopi Tribes; payments to the Turtle Mountain Band of Chippewas (Arizona); payments to the Blackfeet, Grosventre, and Assiniboine tribes (Montana) and the Papago (Arizona); payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana); payments to the Red Lake Band of Chippewas; payments received under the Saginaw Chippewas Indian Tribe of Michigan Distribution of Judgment Funds Act; and payments to the Chippewas of Mississippi.]

(C) [(E)] Acceptable documentation of income are: check stubs stating current earnings; United States Internal Revenue Service form W-2 if less than 90 days old at the time of application and if reflective of current income; a signed statement from the employer; completion of WIC Program affidavit allowed in specific circumstances such as for homeless or those with no income; completion of WIC Program affidavit for self-employed individuals with no business accounting records or who are paid in cash and whose employer will not provide documentation of income; bankbook, if reflective of current income; current federal tax records; income receipt book or other accounting records if self-employed; foster child placement letter; other documentation which the local agency requests to use and which has been approved by the state agency; and the placement letter from the welfare agency legally responsible for a foster child.

(i) Only one document no more than 60 days old which accurately reflects the applicant's income from each source is required, [such as one check stub for each source of income as long as the document is no older than 60 days] unless the applicant only receives such documentation annually, such as a Social Security Award letter.

(ii) Instream migrant farmworkers and their families are required to provide documentation of meeting the income requirements only once every 12 months.

(D) [(F)] Certain applicants shall be deemed adjunctively income eligible as follows.

(i) Applicants who are fully eligible to receive Food Stamps benefits or who are fully eligible or presumptively eligible to receive Temporary Assistance to Needy Families benefits or Medicaid benefits.

(ii) Applicants who are members of families in which one other member is fully eligible or presumptively eligible to receive Temporary Assistance to Needy Families benefits.

(iii) Applicants who are members of families in which a pregnant woman or infant is fully eligible or presumptively eligible to receive Medicaid benefits.

(iv) Applicants shall provide documentation from one of the following categories as proof of their status as [an applicant who is] adjunctively income eligible; [as follows:]

(I) The applicant shall provide written documentation from the other benefit program which shows current eligibility in the benefit program at the time of application to the WIC Program.

(II) The applicant may grant permission for the local agency to conduct a phone or computer on-line verification from the benefit program on behalf of the client when the local agency has the capability to do so.

(v) Applicants eligible to receive Food Stamp benefits shall provide documentation that the applicant himself or herself is fully eligible to receive such benefits.

(vi) Applicants applying as adjunctively income eligible based on receipt of Food Stamps by a family member as head of household shall provide documentation that the person named as head of household for Food Stamps purposes is a member of the applicant's family and is fully eligible to receive such benefits.

(vii) Applicants eligible to receive Temporary Assistance to Needy Families or Medicaid shall provide documentation that the applicant himself or herself is fully or presumptively eligible to receive such benefits.

(viii) Applicants applying as adjunctively income eligible based on a family member's eligibility to receive Temporary Assistance to Needy Families or Medicaid shall provide documentation of the family member's receipt of such benefits and that the recipient is a member of the applicant's family.

(ix) Applicants eligible for adjunctive income eligibility shall verbally declare their total gross family income or net income if self-employed.

(E) [(G)] Income eligibility shall be based on the total income of the family.

(F) [(H)] When determining an applicant's income eligibility for WIC Program services, the local agency shall determine the size of the applicant's family as follows:

(i) All family members shall be counted except for individuals who qualify as a member of a separate economic unit.

(I) A pregnant woman shall be counted as more than one person according to the number of children she expects to give birth to. If she is expecting one child, she shall be counted as two individuals; if she is expecting twins, she shall be counted as three individuals and so on.

(II) A foster child shall be considered a separate family of one.

(ii) Persons temporarily absent from the family may be counted if the following circumstances exist:

(I) other members still consider the family to be the principal residence of the absent member;

(II) the absence does not exceed six months;

(III) the absence is for a purpose such as school, training, employment, hospitalization, or institutionalization; and

(IV) the absent member continues to exercise customary family responsibilities such as income, planning, or physical care.

(G) [(H)] Some individuals may qualify as a separate economic unit as an exception if the unit has an adequate source of income and usually purchases and prepares food separately from other persons who live in the same dwelling or the unit intends after certification to purchase and prepare food separately from other persons who

live in the same dwelling. The following shall not be certified as a separate economic unit:

(i) minor children who live with their parent or parents;

(ii) a child under age 18 who lives with family members who serve as managing conservators and provide more than half of the child's support, and the family members state that the child is under parental control;

(iii) spouses; or

(iv) two people who live together and represent themselves to the community as husband and wife.

(H) [(I)] Individuals who have been determined eligible for WIC Program services are not required to report changes in income during certification periods.

(i) The local agency has no responsibility to monitor the continued income eligibility of the participant during the certification period.

(ii) If the local agency becomes aware of changes in income during a certification period, the participant shall be reassessed for income eligibility under the rules for determining income eligibility.

(4) - (6) (No change.)

(b) Citizenship is not a requirement for eligibility.

[(1) As long as the local agency has caseload openings, individuals who qualify for WIC Program services shall be served without regard to citizenship status.]

[(2) No individual's participation in the WIC Program may be terminated because the individual is suspected as or known to be an undocumented alien.]

[(3) WIC Program confidentiality requirements apply to all applicants and participants regardless of their citizenship status.]

§31.23. Recipients of Supplemental Food Benefits.

(a) - (d) (No change.)

[(e) Not more than one month's supplemental food benefits may be issued to a proxy.]

(e) [(f)] Proxies of participants residing in a homeless facility, temporary shelter, or institution may [shall not] pick up and receive supplemental food benefits for all WIC Program participants in their respective homeless facilities, temporary shelters, or institutions [or transact the food instruments in bulk. The proxy may act on the behalf of only one certified family]. The state and local agencies shall ensure that adult participants are allowed to participate in the process of picking up and transacting food instruments to the greatest extent possible, within the institutional framework, so that they are aware of the foods prescribed for them as well as the intended benefits of such foods.

(f) [(g)] Recipients of supplemental food benefits shall sign the WIC Program Supplemental Information Form prior to receiving such benefits.

(g) [(h)] Recipients of supplemental food benefits shall provide identification at each issuance of food benefits.

(h) Recipients of supplemental food benefits shall receive their benefits at the same time as they receive notification of eligibility for participation in the program.

§31.25. Participant Certification Periods.

(a) An applicant who ~~[After eligibility]~~ has been determined eligible ~~[, applicants]~~ shall be enrolled and certified to receive WIC Program benefits as ~~[for a]~~ specified in this section ~~[length of time]~~. The certification period shall begin on the date the applicant is determined eligible.

(b) - (g) (No change.)

§31.26. *Notification to Applicants of Ineligibility.*

(a) (No change.)

~~[(b) When ineligibility is determined at the time of the certification determination visit, the applicant or parent, caretaker, or guardian applying on behalf of an infant or child shall be notified at that time in person.]~~

~~[(c) When ineligibility is determined after the certification determination visit, the applicant, participant, or parent, caretaker, or guardian of a participant shall be notified by mail.]~~

(b) ~~[(d)]~~ The notification shall inform the applicant or parent, caretaker, or guardian of a participant that he or she has a right to a fair hearing.

§31.27. *Notification to Each Participant ~~[Participants]~~ of Certification Expiration.*

(a) - (b) (No change.)

§31.28. *Notification to Each Participant ~~[Participants]~~ of Termination of Certification.*

(a) - (c) (No change.)

§31.29. *Applicant and Participant Rights.*

(a) (No change.)

(b) At the time of denial of participation or disqualification from the WIC Program, each individual shall be informed in writing of the right to a fair hearing and of the method by which a fair hearing may be requested.

(1) Any individual has the right to appeal a state agency or local agency action which results in the individual's denial of participation in ~~[or suspension]~~ or termination from the WIC Program or the assessment of an administrative claim against the individual for repayment of the cash value of improperly issued benefits.

(2) (No change.)

(3) The oral or written request shall be made within 60 days of the date the state agency mails or gives the applicant or participant the written notice of adverse action ~~[of denial of participation in or suspension or termination from the WIC Program or the assessment of a claim against the individual for repayment of the cash value of improperly issued benefits].~~

(4) - (5) (No change.)

(6) The hearing shall be scheduled within three weeks from the date the request is received. ~~[The state agency shall provide written notice of the time and place of the hearing and an explanation of the hearing procedure to the appellant at least ten days prior to the hearing.]~~

(7) The convenience of the appellant will be considered ~~[of prime consideration]~~ in the selection of the time and place of the hearing.

(8) - (15) (No change.)

(c) (No change.)

§31.30. *Participant Fraud and Abuse.*

(a) (No change.)

(b) If ~~[In all cases where it is found by]~~ the state agency or the Office of the Inspector General, Health and Human Services Commission, determines that a participant or parent, guardian, client-designated proxy, state agency-appointed proxy, or caretaker of a participant has ~~[unlawfully]~~ received benefits unlawfully due to WIC Program abuse, including but not limited to dual participation, the state agency may ~~[has the option to]~~ refer the matter for criminal prosecution.

(c) Program violations means any intentional act of an applicant, [a] participant, parent, guardian or caretaker of an infant or child applicant or participant, client-designated proxy, or state agency-designated proxy that violates Federal or State statutes, regulations, rules, policies or procedures governing the WIC Program. Violations include, but are not limited to, intentionally making a false or misleading statement; intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging food instruments or food for cash, credit, non-food items, or unauthorized foods, including foods in excess of that authorized; threatening to harm or physically harming local agency, vendor or state agency staff; and simultaneous participation in the Program in one or more than one WIC clinic or participation in the Commodity Supplemental Food Program during the same period of time.

(d) (No change.)

(e) Upon a final determination by the Office of the Inspector General, Health and Human Services Commission, ~~[department's Office of Criminal Investigations]~~ that a program violation has occurred and that final disposition of any criminal prosecution has occurred, the following mandatory disqualifications shall apply.

(1) (No change.)

(2) For an offense where a participant illegally received benefits at more than one WIC office and the state agency or the Office of the Inspector General, Health and Human Services Commission, assesses a claim for such dual participation, the participant shall be disqualified for one year.

(3) When the state agency or the Office of the Inspector General, Health and Human Services Commission, assesses a second or subsequent claim of any amount, the participant shall be disqualified for one year.

(f) Upon a final determination by the Office of Inspector General, Health and Human Services Commission, ~~[department's Office of Criminal Investigations]~~ that a program violation has occurred that ~~[which]~~ does not warrant a one year mandatory disqualification ~~[has occurred]~~ and no appeals from ~~[final disposition of]~~ any criminal prosecution remain ~~[has occurred]~~, the following sanctions shall apply.

(1) - (6) (No change.)

(g) Exceptions to disqualification:

(1) The state agency or the Office of Inspector General, Health and Human Services Commission, may decide not to impose a disqualification if, for violations which resulted in a claim assessed by the state agency against the participant, parent, guardian, client designated proxy, state agency-appointed proxy, or caretaker of a participant, full restitution is made within 30 days of receipt of a letter demanding repayment or a repayment schedule is agreed on.

(2) (No change.)

(3) ~~[At the recommendation of the local agency's competent professional authority, the]~~ The state agency may issue a waiver to appoint a person as a special proxy to transact food instruments and

receive nutrition education for an infant, child, or participant under age 18 when the infant, child, or participant under age 18 will incur a serious health risk from the suspension of benefits.

(h) The state agency or the Office of the Inspector General, Health and Human Services Commission, shall attempt to recover, in cash, the value of the benefits received by a participant or the parent, guardian, client-designated proxy, state agency-appointed proxy or caretaker of a participant as a result of participant abuse.

(1) The state agency or the Office of the Inspector General, Health and Human Services Commission, shall determine the amount of the benefits improperly received by a participant through an independent review of local agency records and such other procedures as the state agency considers necessary under the specific circumstances.

(2) (No change.)

(3) In cases involving an administrative claim but no criminal prosecution, the Office of the Inspector General, Health and Human Services Commission, [state agency] shall notify the participant or parent, caretaker, or guardian of a participant in writing that a financial claim has been established and shall request repayment of an amount equal to the value of the benefits improperly received. The written notification shall include the reasons for the claim, the value of the benefits improperly received, [and] the participant's right to a fair hearing, and shall state that the participant or parent, caretaker, or guardian of a participant may be subject to disqualification.

(i) (No change.)

§31.31. Selection of a Local Agency as a WIC Provider.

(a) (No change.)

(b) The state agency shall establish an affirmative action plan each year to rank order each county's relative need for WIC Program services based on the total number of potentially eligible persons in each county.

[(4) The following criteria shall be used to rank each county:]

[(A) Estimates of the proportion of infants below 185% of the federal income guidelines by ethnic group; and]

[(B) Total live births for each county and ethnic group for the previous five years.]

[(2) The affirmative action plan shall be used to identify the top one-third of Texas counties (1 through 85) as high priority due to their status as having the most unserved potentially eligible persons.]

[(3) The most needy one-third of Texas counties shall be designated as targets for the most extensive outreach efforts by the state agency when soliciting for local agencies:]

[(A) If no local agency has applied to provide services, the state agency shall publish a notice in the media of that area to solicit applications from other potential agencies:]

[(i) The state agency shall include in the notice a brief explanation of the program, a description of the priority system, and a request that interested local agencies notify the state agency of their interest within 30 days:]

[(ii) The state agency shall also contact all potential agencies in the area to ensure they are aware of the opportunity to apply for selection as a local agency:]

[(B) If no local agency which meets the criteria for first priority expresses an interest, the state agency may consider applications from agencies in the lower priorities:]

[(C) The state agency shall fund new local agencies in conformance with the sequential ranking of the affirmative action plan and the local agency priority system:]

(c) All WIC Program initiation and expansion shall be executed utilizing a request for proposal (RFP) in accordance with state agency policy, state law, USDA Food and Nutrition Services Instruction 802-1, and the state agency's approved affirmative action plan [; and 10 Texas Administrative Code, Chapter 199, Electronic Business Daily,] under one of the following conditions:

(1) - (2) (No change.)

(3) a state agency health services region [Public Health Region] wishes to transfer direct WIC Program services to a local agency; or

(4) (No change.)

(d) The state agency shall evaluate proposals to serve as a WIC Program local agency submitted in response to an RFP. [according to the following criteria:]

[(1) the ranking of the applying agency in the established priority system:]

[(2) the need for additional WIC Program services in the geographic area based upon review of the number of current participants by priority and the total number who receive services in comparison to the total number of potential eligible participants in an area, and the local agency applicant's estimate of the number to be served:]

[(3) the clinic locations proposed in an application relative to the existing WIC Program local agency clinics operated by other WIC Program authorized local agencies:]

[(4) overall estimated costs of operating the new local agency in comparison to the estimated revenue available to cover local agency costs:]

[(5) the staffing pattern of the local agency to support WIC Program services proposed by the applying local agency:]

[(6) planned hours of operation to include extended clinic hours which are defined as weekends and outside of traditional hours of 8:00 a.m. to 5:00 p.m., Monday through Friday:]

[(7) the availability of other medical services through the applicant agency or by referral; and]

[(8) specific application criteria in the request for proposal:]

(e) The state agency shall advise respondent agencies of the status of their applications to provide WIC Program services in accordance with the schedule of events in the public notice and the RFP. [At a minimum, the schedule of events shall provide for written notification of approval or disapproval to the applicant agencies within 30 days of the closing date for acceptance of responses to the RFP.]

(f) (No change.)

[(g) When a local agency submits an incomplete application for participation either unsolicited or at the request of the state agency as a result of an emergency situation, the state agency shall notify the applicant within 15 days of the receipt of the incomplete application of the additional information needed. The state agency shall notify the applicant agency in writing within 30 days of receipt of a complete application of the approval or disapproval of the application:]

§31.32. Selection of Vendors for WIC Initial Authorization for Participation.

(a) Except as provided by subsection (e) of this section, the state agency shall evaluate an application for participation as a vendor only upon receipt and verification of the following:

(1) a written request for evaluation, which must contain at a minimum, the store name, physical address, name of a contact person, and a phone number at which the contact person can be reached;

(2) a valid Food Stamp Program authorization number for the applicant vendor outlet that the vendor agrees to maintain throughout the period of the agreement with the state agency, unless the vendor declares in writing its intent to provide no WIC-authorized foods other than exempt infant formula; and

(3) a written declaration signed by the applicant or the applicant's authorized representative stating the percentage of total food sales the applicant expects to derive from redemption of WIC food instruments. As used in this paragraph, "total food sales" is defined as the sale of all foods that can be purchased with benefits issued by the Food Stamp Program.

(b) ~~[(a)]~~ A representative from the state agency or the nearest local agency shall perform an on-site evaluation of a vendor outlet applying for authorization to redeem WIC food instruments.

(1) The state or local agency representative shall complete a vendor evaluation form during the on-site visit to the vendor outlet indicating vendor type and size, the type of WIC-authorized foods in stock and their shelf prices, if WIC food products are stocked and available for sale, and whether or not the outlet is a full-line grocery store. The state or local agency representative shall document on the Non-WIC Staple Foods Group Availability form the quantity of foods intended to be offered for sale in the following four food groups: meat, poultry, or fish; breads or cereals; fruits or vegetables; and dairy.

(2) The state or local agency representative shall recommend approval or disapproval of the vendor's application based on the observations during the ~~[store]~~ visit to the outlet.

(3) An outlet ~~[The owner or manager of a store]~~ representative shall have the opportunity to review the information on the vendor evaluation form and shall sign the form to acknowledge accuracy of shelf prices listed at the time of the evaluation. The evaluator shall provide a copy of the form, including the date, local agency number, and the name of the evaluator, to the vendor at the time of the on-site [in-store] evaluation.

(4) If a representative from the state or local agency visits a vendor outlet to conduct the required on-site evaluation at the time previously agreed upon, and outlet cannot be evaluated at that time, the vendor shall be deemed to have failed the evaluation, and the vendor shall not be authorized.

(c) ~~[(b)]~~ The state agency shall approve [base its decision to authorize] a vendor's initial authorization application upon compliance with [vendor on] the following criteria:

(1) The vendor has a current Food Stamp Program authorization and is in good standing.

(2) The vendor has submitted the declaration required under subsection (a)(3) of this section, and the outlet offers for sale non-WIC food items that include meat, poultry, or fish; vegetables or fruits; breads or cereals; and dairy as observed during the on-site evaluation.

(3) ~~[(4)]~~ The vendor's shelf prices for approved WIC foods in stock are competitive for the price region.

(4) ~~[(2)]~~ The vendor has sufficient quantities of authorized milk, evaporated milk, cheese, cereal, contract infant formula, contract infant cereal, eggs, peanut butter, and dried beans.

(A) A vendor that elects ~~[pharmacy may elect]~~ to provide only exempt infant formula or medical foods; [the designated contract milk and soy formulas and special formulas.]

(i) shall not be authorized to redeem WIC food instruments for other WIC-authorized foods, including primary contract brand infant formula; and

(ii) shall not be required to submit a valid Food Stamp Program authorization.

(B) A vendor may elect not to provide infant formula.

(C) A pharmacy that elects to provide only exempt infant formula or medical foods shall not be designated a predominantly-WIC vendor.

(D) ~~[(C)]~~ For vendors who elect to provide all authorized foods, the following amounts of each food type shall constitute sufficient quantities:

(i) a total of at least 108 ounces of adult cereal, including 36 ounces each of at least three of the following types of cereal: oat, corn, wheat, rice, and multi-grain;

(ii) at least six dozen Grade A or AA large, medium, or small size eggs;

(iii) a total of at least 18 containers of juice, including at least two varieties of juice in 46-ounce fluid cans and/or 12-ounce frozen cans;

(iv) a total of at least six pounds of cheese;

(v) a total of at least 13.5 [nine] gallons of milk, some of which must be available in one-half gallon containers and that includes whole milk and at least two of the following types of milk: low-fat, fat-free, and buttermilk;

(vi) at least three one-pound bags of dry beans;

(vii) at least three 18-ounce jars of peanut butter;

(viii) at least eight 12-ounce cans of evaporated milk;

(ix) at least 31 cans each of milk and [or] soy concentrate infant formula (contract brand) and ~~[either]~~ nine [eight] cans each of milk-based powder formula and [or nine cans of] soy powder formula (contract brand); and

(x) at least two 8-ounce boxes or one 16-ounce box of infant cereal.

(5) ~~[(3)]~~ The vendor provides milk in gallon and half-gallon containers and juice in containers of 46-ounce fluid or 11.5 or 12-ounce frozen [containers].

(6) ~~[(4)]~~ The vendor's shelf prices do not exceed the maximum prices on WIC food instruments.

(7) ~~[(5)]~~ The recommendation by the state or local agency representative who conducted the on-site evaluation.

(8) ~~[(6)]~~ The vendor has a retail food operations permit or food manufacturer's permit from the applicable city, county, district, or state health authority.

(9) ~~[(7)]~~ The vendor's outlet [store] is clean, with fresh merchandise (no expired food items).

(10) ~~[(8)]~~ The vendor has no apparent conflict of interest with the local agency in the vendor's service area or with the state agency.

(11) [(9)] The vendor has posted prices for food items.

(12) [(40)] If applicable, the vendor's history of compliance with WIC Program rules, policies, and procedures.

(13) [(44)] The vendor has business integrity as indicated by a lack of activities during the past six years including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or tax evasion.

(14) [(42)] The vendor is not currently disqualified from the Food Stamp Program or has not been assessed a civil money penalty for hardship by the Food Stamp Program and the disqualification period that would otherwise have been imposed by the Food Stamp Program has not expired unless denying WIC Program authorization would result in inadequate participant access.

(15) [(43)] The vendor operates and will transact food instruments at a fixed location ~~[unless a mobile store is necessary to meet special needs as described in the state agency's state plan and approved by USDA].~~

(16) [(44)] The vendor has participated in vendor interactive training.

(17) [(45)] If a vendor elects to provide infant formula, the vendor shall, upon request, make available to department inspectors invoices or receipts documenting purchase of all infant formula directly from entities listed in subparagraphs (A)-(C) of this paragraph and shall agree to purchase all formula only from:

(A) food wholesalers currently licensed in Texas in accordance with the Health and Safety Code, Chapter 431, the Texas Food, Drug, and Cosmetic Act, and Chapter 229 of this title (relating to Food and Drug);

(B) food manufacturers registered with the U.S. Food and Drug Administration; or

(C) retail food stores holding permits in accordance with the Health and Safety Code, Chapter 437.

(d) [(e)] If the state agency disapproves the application by a vendor for authorization, the reasons for the disapproval shall be provided to the vendor in writing.

(e) [(d)] Vendors who apply for authorization who have been evaluated twice within a six-month period and denied approval both times shall not be evaluated again until at least six months from the last evaluation.

(f) [(e)] In the event a vendor purchases or acquires an outlet ~~[a store location or business which]~~ that was in the process of being disqualified or which is disqualified from the WIC Program at the time of acquisition, the vendor's application for that outlet ~~[store]~~ location ~~[or business]~~ shall not be considered until the state agency makes a determination that the sale was a bona fide arms-length transaction. The state agency will make this determination no later than six months from the date of application. If the state agency determines that the transfer was not an arms-length transaction, the application shall not be considered until the disqualification period has been served.

(g) [(f)] If the state agency has disqualified the previous owner of an outlet ~~[a store location or business]~~ for noncompliance or notified the previous owner that the outlet ~~[store location or business]~~ has been disqualified due to noncompliance, a new owner's application for that outlet ~~[store location or business]~~ shall not be considered until at least six months from the expiration date of the previous owner's last vendor agreement unless the state agency makes an earlier determination that the sale was a bona fide arms-length transaction.

[(g)] The state agency may waive the requirement for an on-site evaluation when a grocery chain comprising 20 or more outlets authorized to participate in the WIC Program purchases or merges with another chain with 20 or more authorized outlets if the merger or purchase does not materially change the store's staff or pricing structure.]

[(h)] Upon request, the state agency may provide an applicant vendor with tentative authorization to redeem WIC food instruments starting the day the store opens.]

[(4)] To obtain tentative authorization, the vendor shall comply with all of the following criteria:]

[(A)] The owner of the applicant store owns ten or more stores that have been participating in the WIC Program under the current ownership for at least the six-month period prior to application for authorization.]

[(B)] For the six month period prior to application for authorization, fewer than 20% of the applicant's participating stores' authorizations have been terminated for exceeding the competitive pricing criteria for either the woman/child package or the infant food package for their respective price regions and vendor bands.]

[(C)] None of the participating stores has been disqualified from program participation for two or more months within the 12-month period prior to application for authorization.]

[(D)] The applicant store notifies the state agency prior to the official opening date.]

[(E)] The applicant store's manager or assistant manager acknowledges receipt and understanding of the vendor agreement including its attachments, training materials and manuals, the allowable foods list, and vendor rules and policies.]

[(F)] The applicant store's manager or assistant manager has scored at least 70% on a written test provided by the state agency and returned to the state agency no later than five days prior to the applicant store's opening date.]

[(2)] If, after evaluation, a store which has received tentative authorization from the state agency does not meet all authorization criteria, the store shall be notified of its tentative agreement expiration date and instructed to discontinue redeeming the WIC Program food instruments. The state agency shall honor properly redeemed food instruments from the opening date until the tentative agreement expiration.]

[(4)] On a temporary basis, the state agency may consider and approve applications from new vendors for the following reasons:]

[(1)] the vendor has been authorized to accept Food Stamps;]

[(2)] the disqualification of an existing authorized vendor in a local agency service area would create inadequate access for WIC Program participants;]

[(3)] a currently-authorized vendor outlet(s) changes ownership; or]

[(4)] authorization of a new vendor would result in a significant cost advantage to the WIC Program.]

(h) [(j)] The state agency may deny an outlet's application to participate as a vendor if an owner, partner, principal stockholder, officer, director, manager, or operator of the applicant was an owner, partner, principal stockholder, officer, director, manager, or operator of another vendor outlet, which has been disqualified or which has violated WIC Program vendor agreement procedures, policies, rules or regulations.

(i) ~~[(k)]~~ The state agency may hold an authorized vendor individually responsible for previous violations by an owner, partner, manager, or principal stockholder of the vendor when considering renewal of the vendor's agreement or future applications for vendor agreements.

(j) ~~[(h)]~~ A history of noncompliance with the WIC Program's federal and state statutes and regulations, rules, policies, and procedures shall be considered by the state agency when evaluating an authorized vendor's application for authorization of new outlets. The state agency will not authorize new outlets for a vendor where 50% of the vendor's outlets are in a disqualification or termination status at the time of a request to authorize new outlets.

(k) A vendor deemed ineligible for initial authorization to participate in the WIC Program due to noncompliance with the requirements of subsection (c)(2) of this section may be authorized if the vendor's participation is needed to address inadequate participant access to WIC-authorized stores, as determined by the state agency under WIC Policy WV:03.0.

(1) After the vendor's first four months of operations as an authorized vendor, the state agency shall assess the vendor to determine whether the vendor's WIC food sales exceed 50% of sales of all foods that can be purchased using benefits issued by the Food Stamp Program.

(2) If the vendor's WIC food sales exceed 50% of sales of all foods that can be purchased using benefits issued by the Food Stamp Program during the first four months of operations, the vendor agreement shall be terminated. The vendor shall receive written notification of the termination at least 15 days prior to the effective date.

(3) Termination of the vendor agreement shall not be held in abeyance during the pendency of an appeal or hearing.

\$31.33. Selection of Vendors for Reauthorization for Participation.

~~[(a)]~~ Vendors with a current vendor agreement who seek reauthorization shall reapply and shall be evaluated for issuance of a subsequent vendor agreement under WIC Program procedures, policies, rules, and regulations and shall be reauthorized unless notified in writing by the state agency at least 15 days before expiration of the vendor agreement.

~~[(b)]~~ Prior to reauthorization, the state agency shall assess and review the qualifications of all vendors to assure that each continues to meet the WIC Program's goals. Criteria utilized in assessment and determination of qualifications for reauthorization include, but are not limited to:—

~~[(1)]~~ Competitive prices for the price region. A vendor's prices shall be considered competitive if the combined prices for the items included in the standard woman/child and/or infant food package do not exceed 108% of the price region food package averages for the vendor's band:—

~~[(2)]~~ Volume of WIC sales. The vendor's volume of WIC sales exceeds \$300 a month. If monthly sales fall below \$300 a month for three consecutive months prior to the time of the vendor agreement reauthorization evaluation, the vendor agreement may not be renewed. If the state agency allows the Vendor Agreement to expire, the state agency will not consider the vendor's application to participate for six months after the expiration of the vendor's prior Vendor Agreement:—

~~[(3)]~~ Previous compliance with WIC Program procedures, policies, rules, and regulations. The vendor has satisfactorily complied with food instrument redemption and submission procedures, policies, rules, and regulations:—

~~[(4)]~~ Continuing to meet selection criteria. The vendor continues to meet the selection criteria as stated in 7 CFR Part 246; this

section; and in §31.32 of this title (relating to Selection of Vendors for WIC Initial Authorization for Participation):—

~~[(5)]~~ Use of the WIC acronym or WIC logo. If the state agency determines that the vendor failed to comply with the prohibitions on the use of the WIC acronym or WIC logo; after having received a written warning, the state agency will disqualify the vendor for three months. The state agency will accept a civil money penalty in lieu of disqualification:—

~~[(6)]~~ Failure to attend training. The vendor agreement shall not be renewed if a vendor or vendor representative has not attended a WIC vendor interactive training within three years from the last date a representative attended a WIC vendor interactive training:—

~~[(e)]~~ A history of noncompliance with WIC Program procedures, policies, rules, and regulations shall be considered by the state agency in determining if the vendor is eligible for a subsequent contract:—

~~[(d)]~~ The state agency may allow a vendor's agreement to expire and not be renewed if the vendor has a history of noncompliance with provisions in the vendor agreement or the WIC Program procedures, policies, rules, and/or regulations:—

~~[(1)]~~ Expiration of the vendor agreement is not subject to appeal:—

~~[(2)]~~ In the event the vendor's agreement has been allowed to expire due to previous noncompliance, a vendor's request for reauthorization shall not be considered until at least six months from the expiration date of the vendor's last agreement:—

~~[(e)]~~ All vendors must have a retail food operation permit or food manufacturers' permit from the applicable city, county, district, or state health authority:—

\$31.34. Calculation and Use of Vendor Competitive Pricing Data.

(a) The state agency shall use the following calculation to determine whether a vendor's prices are competitive with those of similar vendors in the price region.

(1) - (6) (No change.)

(7) The state agency may reassign a vendor to an alternative comparison group when the vendor is a [; such as a high-volume,] national discount superstore, [or a primarily WIC-only store,] a pharmacy or vendor that has elected to provide only exempt infant formula, a predominantly-WIC vendor, a military commissary, a vendor that is not characteristic of other vendors in the band, a [; when the] vendor that is the only store in a rural area within the price region, [;] or a [when the] vendor that is the sole occupant of a band.

(b) (No change.)

\$31.35. Vendor Agreement with the State Agency.

(a) (No change.)

~~[(b)]~~ A vendor agreement may cover more than one outlet. The disqualification of one outlet does not affect the authorization of other outlets covered by the vendor agreement.

~~[(c)]~~ The cessation of operations at an authorized vendor outlet terminates the agreement for that outlet unless:

~~[(1)]~~ the vendor seeks to relocate the outlet for reason(s) beyond the vendor's control, such as loss of lease or damage to the premises caused by fire, flood, or natural disaster; or

~~[(2)]~~ the vendor voluntarily seeks to relocate the outlet to enhance the quality or access to services available to WIC clients; and

~~[(3)]~~ for any relocation authorized under this subsection:

(A) the outlet shall be relocated to another address within the same community;

(B) the vendor shall notify the state agency in advance of reason(s) for the relocation;

(C) the relocation will not increase the total number of authorized outlets operated by the vendor;

(D) the new site shall comply with all criteria in §31.32 of this title (relating to Selection of Vendors for WIC Initial Authorization for Participation); and

(E) the outlet is not disqualified at the time of the relocation request, or has not received notification of a pending disqualification at any time prior to or after informing the state agency of the proposed relocation but before the relocation has been completed.

(d) [(b)] A change of ownership of an authorized outlet or account terminates the agreement between the state agency and the vendor. A change of ownership occurs when all, or substantially all, of the property or assets of a vendor are acquired by a purchaser in a bona fide arms-length transaction.

(1) In the event a store location/business under previous ownership was disqualified or is in the process of being disqualified at the time of acquisition, the new owner's application for that store location/business shall not be considered until the state agency makes a determination that the sale was a bona fide arms-length transaction. The state agency will make this determination no later than six months from the date of application. If the state agency determines that the transfer was not a bona fide arms-length transaction, the application shall not be considered until the disqualification has been served.

(2) If the state agency has notified the previous owner that the vendor's agreement for a store location/business shall be allowed to expire, the new vendor's application for that store location/outlet shall not be considered until at least six months from the expiration date of the previous vendor's last agreement unless the state agency makes an earlier determination that the sale was a bona fide arms-length transaction.

(3) If a store/location under previous ownership is not disqualified or is not in the process of being disqualified at the time of acquisition, and/or the previous owner has not been notified that the vendor agreement for that store location/business will be allowed to expire, and the acquiring party is in compliance with the rules, regulations, and vendor qualification criteria of the WIC Program, the acquiring party may, upon request, be considered for authorization [authorized] as a WIC Program vendor.

(A) The applicant vendor must submit a written notification [affidavit] stating that a change of ownership has been effected and duly executed by the seller and purchaser or their duly authorized officers or other agents.

(B) The notification [affidavit] shall include, at a minimum, the following information and any other information the state agency deems necessary: name and business address of the seller; name and business address of the purchaser; WIC vendor account number and outlet number, if applicable; name(s) and street address(es) of the outlet location(s); effective date of ownership change; and State of Texas Comptroller tax number of new owner.

(C) The authorized vendor shall provide the state agency with written notification prior to the sale, including the date the outlet being sold will cease to accept WIC food instruments.

(e) [(e)] WIC food instruments redeemed at an applicant store shall not be paid until the store has been duly authorized, including

completion of an on-site evaluation, with recommended approval by the local agency, execution of the vendor agreement and vendor profile, and assignment of an account/outlet number by the state agency.

(f) [(d)] A vendor's unilateral termination of a vendor agreement after receipt of notification by the state agency of a violation shall not deprive the state agency of jurisdiction to impose sanctions for WIC Program violations.

(g) [(e)] The vendor agreement does not constitute a license, since a vendor does not require the state agency's approval to engage in the retail grocery business in Texas and the vendor would not effectively be deprived of this right in the absence of WIC Program authorization.

(1) The vendor agreement conveys no property interest since federal law does not give rise to a legitimate claim of entitlement for vendors.

(2) The terms of authorization are established in the vendor agreement between the state agency and the vendor, and the contractual relationship ends with the expiration of the vendor agreement.

(3) The state agency as well as officers, agents, and employees of the state agency are not responsible for losses incurred by a vendor as a result of the expiration of the vendor agreement.

§31.36. *The Right of a Vendor or a Local Agency to Appeal.*

(a) - (d) (No change.)

(e) The written request of a [A] local agency or vendor must be received by [shall provide] the state agency [with a written request for a hearing] within 15 days of the receipt by the local agency or vendor of the notice of denial or adverse action. The written request shall, at a minimum, describe the action being appealed. Requests for hearing may be submitted by facsimile.

(f) - (k) (No change.)

§31.37. *Selection of Allowable WIC Program Supplemental [Allowable] Foods.*

(a) - (k) (No change.)

(l) Additional criteria for each food type are as follows:

(1) Milk. Milk shall be:

(A) (No change.)

(B) whole, low-fat, or fat-free (nonfat) evaporated cow's milk fortified with vitamins A and D to meet the federal standards; and/or

(C) (No change.)

(2) - (5) (No change.)

(6) Beans/Peas/Lentils. Beans, peas, and lentils shall be dry with the exception of canned beans/peas/lentils [beans] which may be authorized only for the homeless food package.

(7) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505489

Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 8, 2006
For further information, please call: (512) 458-7236

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25 TAC §31.24

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is authorized under Agriculture Code, §15.005, which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the Farmers' Market Nutrition Program. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also authorize the executive commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and

provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed repeal affects Health and Safety Code, Chapter 1001; Government Code, Chapter 531; and Agriculture Code, Chapter 15.

§31.24. *Provision of Immunizations to WIC Applicants and Participants.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505490
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 8, 2006
For further information, please call: (512) 458-7236

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.77

The Texas State Library and Archives Commission withdraws the proposed amendment to §1.77 which appeared in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3504).

Filed with the Office of the Secretary of State on November 28, 2005.

TRD-200505472

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: November 28, 2005

For further information, please call: (512) 463-5459

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH SUBCHAPTER S. REQUESTS FOR PROVIDING PUBLIC INFORMATION

25 TAC §1.251

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §1.251, concerning procedures for handling requests for public information without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3531), and therefore the section will not be republished.

BACKGROUND AND PURPOSE

The section implements procedures for handling public information requests under the Public Information Act, Government Code, Chapter 552.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.251 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendment to §1.251(a) provides clarification to the rule regarding written requests. The amendment to §1.251(d) provides clarification to the rule regarding how copyright materials may be copied by the requestor so the department does not violate any copyright restrictions. An amendment was made to §1.251(e)(5) in order to do away with the use of remittance envelopes and clarify that the requestor must return a copy of the billing statement when returning the remittance to the department. Section 1.251(e)(6) was added to clarify what the department may do regarding billings exceeding \$100 that are unpaid. Sections 1.251(e)(7) and (e)(8) were renumbered due to the addition of §1.251(e)(6).

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption had been reviewed by legal counsel and found to be within the state agency's authority to adopt.

STATUTORY AUTHORITY

The rule is adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505448

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: December 12, 2005

Proposal publication date: June 17, 2005

For further information, please call: (512) 458-7111



CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER P. SURVEILLANCE AND CONTROL OF BIRTH DEFECTS

25 TAC §§37.301 - 37.306

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§37.301 - 37.306 concerning the surveillance and control of birth defects. The amendments to §37.303 and §37.305 are adopted with changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3812). Sections 37.301, 37.302, 37.304, and 37.306 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, §87.021, which requires the department to adopt rules on the operation of the birth defects program; and Health and Safety Code, §87.022, which requires the department to

adopt rules on how information will be collected and made available.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.301 - 37.306 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

In reviewing and amending these rules, the department has carefully considered the purposes of this program and the factors the legislature required the department to consider in Health and Safety Code, §87.021(e). The department finds the amended rules are the most efficient means of meeting these legislative mandates.

SECTION-BY-SECTION SUMMARY

Amendments to §§37.301 - 37.306 provide for revisions to clarify text and delete references to legacy agency names and redundant language. Amendment to §37.303 adds a new definition for "surveillance" and provides clarification to other definitions. The new §37.305(b)(4) adds new language to provide guidance for passive data collection and reporting of Fetal Alcohol Spectrum Disorders. Amendment to §37.305(d)(2) adds new language to clarify passive data collection.

DEPARTMENT COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes.

Change: Concerning §37.303(14), the department added a comma after the word "analysis."

Change: Concerning 37.305(b)(4), the department corrected the terminology "Fetal Alcohol Syndrome Disorders (FASD)" to "Fetal Alcohol Spectrum Disorders (FASD)."

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §87.021, which requires the department to adopt rules on the operation of the birth defects program; §87.022 which requires the department to adopt rules on how information will be collected and made available; §87.063 which requires the department to establish criteria to be used in deciding how research proposals will be approved; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code. Review of the rules implements Government Code, §2001.039.

§37.303. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Birth defect--A physical or mental functional deficit or impairment in a human embryo, fetus, or newborn resulting from one or more genetic or environmental causes.

(2) Birthing center--A place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

(3) Case finding--The process used to identify potential cases for inclusion in the central registry of the program. Potential cases are obtained through review of medical and health records, logs, indices, appointment rosters and other records.

(4) Central registry--Cases of birth defects obtained through the surveillance activity of the program.

(5) Commissioner--The Department of State Health Services Commissioner.

(6) Communicable disease--An illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(7) Department--The Department of State Health Services.

(8) Environmental cause--The sum total of all the conditions and elements that make up the surroundings and influence the development of an individual.

(9) Harmful physical agent--A physical phenomenon, other than a toxic substance, that has or may have carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes ionizing radiation, X-rays, gamma rays, ultraviolet light, or other electromagnetic radiation; and acoustical, thermal, or mechanical vibration.

(10) Health facility--Any of the following types of facility:

(A) a general or special hospital licensed by the department under Health and Safety Code, Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital maintained and managed by the Department of State Health Services and a state mental retardation facility maintained and managed by the Department of Aging and Disability Services;

(E) a genetic evaluation and counseling center;

(F) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Health and Safety Code, Chapter 121;

(G) a physician peer review organization; or

(H) a birthing center.

(11) Health professional--An individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education or training and may require a special examination, certificate, license, or membership in a regional or national association.

(12) Local health unit--A division of municipal or county government that provides public health services but does not provide each service required of a local health department under Health and

Safety Code, §121.032(a), or of a public health district under Health and Safety Code, §121.043(a).

(13) Midwife--A person who practices midwifery and has met the requirements of the standards of the midwifery board.

(14) Surveillance--The systematic collection, analysis, interpretation, and dissemination of health data on an ongoing basis.

(A) Active surveillance--program staff regularly contact or visit data sources to find and collect data on cases.

(B) Passive surveillance--program receives case reports from data sources.

(15) Toxic substance--A substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health.

§37.305. Surveillance of Birth Defects: Central Registry.

(a) The central registry shall use a birth defects coding scheme used by the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service in their birth defects monitoring programs.

(b) In order for information related to a child to be included in the central registry, the following conditions must be met.

(1) The county of occurrence of birth or the mother's residence at the time of birth must have been in Texas.

(2) The child must have a structural or genetic birth defect or other specified outcome that can adversely affect his or her health and development as defined in subsection (a) of this section.

(3) The defect must be diagnosed prenatally or within one year after delivery. In certain circumstances (e.g., the diagnosis of fetal alcohol syndrome, special studies and childhood genetic disorders diagnosed after infancy), the upper age limit will be extended to age six.

(4) In addition, reports of Fetal Alcohol Spectrum Disorders (FASD), regardless of the affected person's age, will be collected under Health and Safety Code, §87.021(f), of the statute providing for passive data collection.

(c) A reportable defect as defined in subsection (a) of this section occurring in a fetal death or pregnancy termination shall be included in the central registry.

(d) Interaction between department staff and staff at facilities is detailed below:

(1) The chief operating officer, administrator, manager, director, and/or person in charge of each facility or office or center shall appoint one staff member as the contact person for the central registry surveillance activities. That staff member will coordinate scheduled visits by central registry staff to review logs, discharge indices and other case-finding sources, and will be responsible for arranging medical records review visits and providing the needed records at the time of the scheduled visit.

(2) Potential cases are obtained by department staff through review of medical and health records, logs, indices, appointment rosters, and other records. Cases may also be obtained through passive reporting from health facilities and health professionals.

(3) Central registry staff and the contact individual shall establish a general schedule of case-finding and record review visits. This schedule shall take into account the capabilities of the health care facility in responding to requests, as well as the expected needs of the central registry workload.

(e) The medical records and other materials provided by the health care facility shall not be removed from that facility. If copies are made, registry staff must abide by procedures regarding copier use agreed upon with each health care facility. All information, either on paper or in electronic form, which is removed from the health care facility shall be transported by secure means at all times. Forms, notes, and other information will be carried in locked brief cases and will be stored in locked offices or locked file cabinets.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2005.

TRD-200505453

Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

SUBCHAPTER A. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §§356.1 - 356.13

The Texas Water Development Board (board) adopts amendments to 31 TAC §§356.1 - 356.10 and new §§356.11 - 356.13, concerning Groundwater Management, Subchapter A, Groundwater Management Plan Certification. Sections 356.2, 356.5, 356.6, 356.8, 356.10, 356.12, and 356.13 are adopted with changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5311). Sections 356.1, 356.3, 356.4, 356.7, 356.9, and 356.11 are adopted without changes and will not be republished.

These amendments and new sections are adopted in order to conform to the statutory changes of House Bill (HB) 1763, 79th Legislature, Regular Session (2005) and pursuant to the four-year rule review requirement of Texas Government Code, §2001.039.

The board renames Subchapter A to Groundwater Management Plan Approval and amends §356.1 due to the fact that HB 1763 renamed the groundwater management plan certification process to be an approval process. Therefore, the board removes the word "certifying" and replaces it with the word "approving."

The board adds a new definition for the term "administratively complete." The purpose of this addition is to be consistent with

HB 1763, which defines when a management plan is administratively complete and can be approved by the executive administrator of the board. This definition is taken from HB 1763. The board amends the definition for "approved regional water plan." House Bill 1763 changed the law to remove this term and replaced it with "adopted state water plan." To be consistent with the law, the board amends the term to "adopted state water plan." The board adds a definition for the term "conflict." Under Chapters 16 and 36 of the Water Code, the board has the duty to resolve conflicts between approved groundwater management plans and the adopted state water plan. In order for the public to understand what a conflict is and how the board resolves conflicts, the board defines the term "conflict." This definition is consistent with the changes made by HB 1763 and provides clarity on what a conflict is. The board adds a definition for "desired future conditions." House Bill 1763 requires groundwater conservation districts within a groundwater management area to work together to identify the desired future conditions of the groundwater resources within their area. Once the desired future conditions are identified, the districts will request the corresponding values of managed available groundwater from the board. The board defines the term for clarity and to provide consistency with HB 1763. The board amends the definition based on public comment to add "water quality" to the definition and to show that the desired future conditions may change over time. Also based on public comment, the board adds clarification to the desired future conditions definition to state that the desired future conditions must be physically possible individually. The board will not be able to calculate the managed available groundwater if the desired future condition is physically impossible (for example, if the desired future condition states that spring flow should be maintained at a minimum of 100 cubic feet per second in perpetuity when spring flow has never been above 100 cubic feet per second). The definition is also revised to state that the desired future conditions must be physically possible collectively, if different desired future conditions are stated for different geographic areas overlying an aquifer or subdivision of an aquifer. The board may not be able to calculate managed available groundwater if geographic areas over the same aquifer or subdivision of an aquifer have disparate desired future conditions (for example, if there are two geographic areas next to each other over the same aquifer but only one has a desired future condition of no additional drawdowns for perpetuity while the other has a desired future condition of 50% of the volume of the aquifer remaining after 50 years, the board will not be able to calculate the managed available groundwater because the two desired future conditions are incompatible with each other). Based on public comment, the board offers the following examples of desired future conditions:

- (1) an example based on water levels: On average, water levels are 100 feet lower than current levels in 50 years.
- (2) an example based on water quality: Total dissolved solids concentrations are not allowed to exceed 1,000 milligrams per liter in 50 years.
- (3) an example based on spring flows: Spring flows are not lower than 10% of mean values for perpetuity.
- (4) an example based on volume: Fifty percent of the water in the aquifer is remaining after 50 years.

The board adds a definition for the term "discharge." This is for consistency with HB 1763, which added the term as a required element of groundwater management plans. The board adds a definition for the term "inflows." This is also to be con-

sistent with HB 1763, which added the term as a required element of groundwater management plans. The board adds a definition for the term "managed available groundwater." This is to be consistent with HB 1763, which added the term as a required element of groundwater management plans. Based on public comment, the board moves the definition of "person with a legally defined interest in groundwater in a district" from §356.10(a) to §356.2(18) so that it is in the definition section of the rules. The board removes the definition for the term "projected water supply." This is to be consistent with HB 1763, which requires a similar term, "managed available groundwater." The board, therefore, removes the definition for projected water supply to avoid confusion. The board amends the definition for the term "recharge." This is to be consistent with HB 1763, which defined recharge in a manner different from the board's previous rule. The board updates the name of the Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Lastly, the board adds a definition for the term "total aquifer storage." This term is added to be consistent with HB 1763, which added the term to Chapter 36, Water Code. The board expands on the statutory definition slightly in order to clarify how total aquifer storage is calculated, so that the calculations are consistent across groundwater conservation districts.

The board amends §356.3 for two reasons. First, the board amends the rule to remove the requirement that a groundwater management plan be submitted within two years of the creation of a district and replace it with a requirement to submit the management plan within three years of creation. This is to be consistent with HB 1763, which amended the law in this manner. Likewise, the board amends the rule to state that districts must review and readopt their management plans every five years to track the language of HB 1763. The amendment is also for clarity. The board adds references to §356.5 and §356.6 in order to clarify how the management plans must be submitted to the board.

The board amends §356.4 to clarify how a groundwater conservation district must share its management plan with regional water planning groups. First, the board removes the phrase "For management plans certified after January 5, 2002," because it is no longer needed. Second, the board adds the phrase "a copy of its approved management" before "plan" for clarity. Third, the board amends the word "consideration" to "use" when discussing the action of the regional water planning groups to track the language of HB 1763. Lastly, the board splits the section into two paragraphs to add a new paragraph (2). This new paragraph requires the groundwater conservation districts to not only submit their management plans to the regional water planning groups within the territory of the district, but also any regional water planning group identified by the board. The board adds this requirement because regional water planning groups outside of the district may have a water management strategy that involves groundwater in the district. To ensure proper planning, the board will identify any regional water planning groups considering utilizing district groundwater and ask the district to send a copy of its management plan to that regional water planning group.

The board amends §356.5. First, the board amends §356.5(a) to remove language concerning certification of management plans and administrative completeness. This is to ensure consistency with HB 1763 and to account for the fact that the board added a definition for "administratively complete" in §356.2. Second, the board adds, to §356.5(a), the requirement that districts identify why a required element of the management plan is omitted. This

is based on HB 1763, which amended §36.1071, Water Code, to expand the required elements of a management plan. Section 36.1071(a)(7), Water Code, requires "recharge, enhancement, rainwater harvesting, precipitation enhancement, or brush control" to be included in the management plan "where appropriate and cost-effective." Further, §36.1071(a), Water Code, states the required elements should be included "where applicable." Currently, if a management plan omits a required element, it usually does not state why and the board must assume it is because the element was not applicable. Due to this ambiguity and based on the guidance provided by HB 1763, the board amends §356.5(a) to simply require districts to provide a brief explanation of why a required element of the management plan is omitted. Based on public comment, the Board also removes the phrase "as applicable" from §356.5(a)(1) to avoid confusion with the language added to §356.5(a). The board also adds language to §356.5(a)(1)(B) in order to clarify what constitutes "waste of groundwater." The rule now explains the phrase to be "waste of groundwater through contamination induced by abandoned oil and gas wells, abandoned water wells, leaking pipelines, and other sources." This will clarify the requirement and bring consistency to management plans.

The board amends §356.5(a)(1)(G) and adds new §356.5(a)(1)(H) to track the language of HB 1763. Specifically, these changes mirror the new language in §36.1071(a)(7) and (8), Water Code. Based on public comment, the board amends §356.5(a)(1)(H) to make it clear that the management plan does not need to include the desired future conditions if these conditions have not been identified pursuant to the joint planning process of §36.108, Water Code.

Based on public comment, the board amends §356.5(a)(4). Originally, the board proposed to move the phrase "all specified in as much detail as possible" to make it clear this phrase references the actions, procedures, performance, and avoidance of the districts, and not their administrative rules. Further, the board proposed changing the phrase to read "all specified in as much detail as practicable" to make it clear that reasonableness is the standard. The board adopts these amendments. However, public comments objected to the requirement to provide proposed rules to the board when submitting a groundwater management plan. House Bill 1763 changed the way districts adopt rules. The new process includes posting proposed rules on the Internet. Based on public comment, the board further amends §356.5(a)(4) to remove the requirement that districts submit proposed rules and replace with a requirement for the districts to simply provide the Internet address of any proposed rules they have at the time they submit their management plans.

The board amends §356.5(a)(5) to be consistent with HB 1763. Specifically, the board rewords §356.5(a)(5) to track the required management plan elements from §36.1071(e)(3), Water Code. Based on public comment, the board amends §356.5(a)(5) to make it clear that the management plan does not need to include managed available groundwater if the desired future conditions have not been identified pursuant to the joint planning process of §36.108, Water Code.

The board amends §356.5(b) to be consistent with HB 1763. Under HB 1763, §36.1071(h), Water Code, was amended to state that districts may use site-specific information in their management plans as long as this information has been provided to the executive administrator of the board for review and comment before being used in the plan. The board amends §356.5(b) to be consistent with this new statutory language.

The board removes §356.5(c) and (d) to be consistent with HB 1763. Under HB 1763, management plans no longer have to be consistent with regional water plans, so the board simply removes this requirement from the rules and replaces it with new §356.5(a)(7), which tracks the language of HB 1763. Specifically, the new provision requires the districts to consider the water supply needs and water management strategies included in the adopted state water plan.

The board amends §356.6(a) to be consistent with HB 1763. Specifically, the board removes the language referring to "certification" and replaces it with "approval." The board also removes the phrase "administrative completeness" to avoid confusion. The board added a definition for the term "administratively complete" in §356.2.

The board amends §356.6(a)(1) to require districts to submit one hard copy and one electronic copy of their management plans. The board adopts this requirement to save costs. An electronic copy can be easily routed for review and approval without requiring several hard copies be made at state or local expense.

Based on public comment, the board also amends §356.6(a)(3). As proposed, this provision required districts to provide a copy of proposed rules to the board. Under the new rule adoption process in HB 1763, the districts will place proposed rules on the Internet. The board amends §356.6(a)(3) to simply require the districts to provide the Internet address for any proposed rules at the time the management plan is submitted to the board. The board retains the requirement of some form of submission of proposed rules because §36.1071(f), Water Code, requires districts to have administrative rules necessary to implement their management plans. Often, these rules provide guidance and explanation of the management plans. Therefore, in order to understand the full scope of the management plans, the board requires the districts to submit one unbound copy of their current rules and the Internet address for proposed rules at the time of submitting their management plans for approval. Former §356.6(a)(3) has been renumbered to §356.6(a)(4).

The board amends §356.6(a)(4) to, first, renumber it to §356.6(a)(5) and to make it consistent with HB 1763. Specifically, the board rewords the paragraph to take into account the new "desired future conditions" requirements of HB 1763. Districts will have to show evidence of the desired future conditions developed under §36.108, Water Code.

The board removes the original §356.6(a)(5), because it is no longer needed under HB 1763. House Bill 1763 removed the requirement that management plans be consistent with regional water plans. The board removes this paragraph to take this into account. Based on public comment, the board amends §356.6(a)(5) to make it clear that the requirement does not apply if the desired future conditions have not been identified pursuant to the joint planning process of §36.108, Water Code.

The board amends §356.6(b) for clarity. The board only has 60 days to review and approve a management plan under §36.1072, Water Code. This amendment makes it clear that the 60-day review period does not begin until a management plan has been submitted in accordance with law.

The board amends §356.7. First, the board renames the section "Approval" instead of "Certification," to be consistent with HB 1763. Second, the board amends §356.7(a) for clarity and to be consistent with HB 1763. Specifically, the board amends §356.7(a) to make it clear that the approval process only begins once a management plan has been properly submitted. The

board also amends the subsection to make it clear that the approval process applies to amendments and readoptions of management plans. The board also removes references to "certification" and replaces them with "approval."

The board amends §356.7(b) to replace "certification" with "approval" to be consistent with HB 1763.

The board adds new §356.7(c) to be consistent with HB 1763. Specifically, this new subsection merely tracks the language HB 1763 added to §36.1072(e), Water Code, concerning how long approved management plans remain in effect.

The board amends §356.8(a) to be consistent with HB 1763 by replacing the term "certification" with "approval." The board makes the same substitution in §356.8(b) and removes the language about the board's action being final. This is due to HB 1763, which provides an appeal mechanism. Based on public comment, the board also amends §356.8(a) to add the phrase "and shall provide a copy of the response to the district" at the end of the last sentence. This is done to clarify that districts will receive a copy of any response submitted by the executive administrator.

The board adds new §356.8(c) to track the new appeals process language of HB 1763. Specifically, the new subsection tracks the language added by HB 1763 to §36.1072(f), Water Code, concerning mediation.

The board amends §356.9. First, the board amends the title of the section to replace "Certification" with "Approval." Second, the board amends the section to make it clear that amendments to the management plan can either be submitted as an addendum to the current management plan or by highlighting the changes in the entire management plan. This will make it easier for the submission and approval of amendments. Lastly, the board removes the language about the approval process and, instead, simply refers to the process already established in §356.6.

The board amends §356.10(a) to replace the word "certified" with "approved" to be consistent with HB 1763. The board amends §356.10(b). Specifically, the board removes the phrase "Within 30 days of receiving the petition" to be consistent with HB 1763. The board also adds the phrase "provide technical assistance to and" to also be consistent with and track the language of HB 1763. Based on public comment, the board removes the definition of "person with a legally defined interest in groundwater in a district" and moves it to §356.2(18) so that it is in the definitions section of the rules.

The board amends §356.10(c) - (e) and adds new subsection (f) to track the language of HB 1763 regarding conflict resolution. Specifically, the board amends these subsections to track the language HB 1763 added to §36.1072(g), Water Code.

Based on public comment, the board amends §356.10(d). Specifically, the board makes a grammatical change that has no impact on the meaning of the rule.

The board adds new §356.11 to be consistent with HB 1763. Specifically, this new language tracks the language HB 1763 added to §36.108(l) - (n), Water Code, regarding a petition about the reasonableness of the desired future water conditions of groundwater resources.

The board adds new §356.12 to be consistent with HB 1763. Specifically, this new language tracks the language HB 1763 added to §36.1071(d), Water Code. Based on public comment, the board amends the proposed language to state that

the board shall provide training on basic data collection and reporting methodology.

Lastly, the board adds new §356.13 to be consistent with HB 1763. Specifically, this new language tracks the language HB 1763 added to §36.109, Water Code. Based on public comment, the board amends the proposed language to state that the executive administrator shall provide districts with a list of formats for reporting that are acceptable. This will clarify the reporting format for districts.

The board conducted a hearing on the proposed rules on September 13, 2005 in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas. Six attendees submitted comments during this hearing. The following made comments to board staff either at the public hearing or in writing within the prescribed period following the publication of the proposed rules: Blanco-Pedernales Groundwater Conservation District, Emerald Underground Water Conservation District, Hemphill County Underground Water Conservation District, High Plains Water District, Irion County Water Conservation District, Lost Pines Groundwater Conservation District, Mesa Underground Water Conservation District, North Plains Groundwater Conservation District, Panhandle Groundwater Conservation District, Rolling Plains Groundwater Conservation District, South Plains Underground Water Conservation District, Sterling County Underground Water Conservation District, Texas Alliance of Groundwater Districts, and WaterTexas.

Blanco-Pedernales Groundwater Conservation District commented that §356.10(d) appears to be in direct conflict with §356.10(f), because §356.10(d) requires the districts to prepare a revision to the management plan while §356.10(f) says the district may appeal the decision of the board to a district court in Travis County. The word "shall" in §356.10(d) should be substituted with the word "may". This would be more in the spirit of the legislatively mandated option of the district to disagree with the board. Or, the board could place a qualifier in §356.10(d) to require the process unless the district opted to appeal, as provided by §356.10(f). *The board makes no changes based on this comment. While the board sees the merit to the recommendation, the board opts to mirror the language provided by HB 1763 in order to stay true to the legislative intent and not exceed statutory authority.*

Blanco-Pedernales Groundwater Conservation District, Emerald Underground Water Conservation District, Irion County Groundwater Conservation District, North Plains Groundwater Conservation District, and Sterling County Underground Water Conservation District commented that the board should not require, in §356.5 and §356.6, copies of the districts' proposed rules. Proposed rules are subject to change. This should be changed to "adopted." North Plains Groundwater Conservation District stated that the board could instead require the districts to identify where, in their management plans, rules are being considered to implement the plans. *The board makes changes based on this comment. House Bill 1763 changed the method by which district propose and adopt administrative rules. These changes require districts to post proposed rules on the Internet. The board changes §356.5 and §356.6 to require districts to only provide hard copies of adopted rules and the Internet links for all proposed rules at the time the districts submit their management plans.*

Blanco-Pedernales Groundwater Conservation District, Emerald Underground Water Conservation District, Hemphill County Underground Water Conservation District, High Plains Wa-

ter District, Mesa Underground Water Conservation District, Panhandle Groundwater Conservation District, and the Texas Alliance of Groundwater Districts commented that the definition, found in §356.10(a), of a "person with a legally defined interest in groundwater" is too broad. This definition should be tied to ownership of groundwater as stated in §36.002, Water Code. Blanco-Pedernales Groundwater Conservation District, Emerald Underground Water Conservation District, and the Texas Alliance of Groundwater Districts commented that the phrase "but not limited to" should be removed and that the definition should be added to §356.2. The Texas Alliance of Groundwater Districts also commented that the phrase "administratively complete" should be added in front of "application pending." *The board makes changes based on this comment. The definition is moved from §356.10(a) to §356.2(18) so that it is in the definition section of the rules. The definition, though, is not changed from its original wording. Section 36.002, Water Code, states that Chapter 36 does not deprive or divest land owners, lessees, and assigns of their rights in the groundwater. This section does not define who has a legally defined interest in groundwater. While the land owners, lessees, and assigns should have a legally defined interest in groundwater, the board does not believe they comprise a mutually exclusive definition for the term. As stated in §356.10(a), individuals with a legal interest in a water well or who have an authorization from or application pending with a groundwater conservation district to produce groundwater may also have a legally defined interest in groundwater. The board does not believe it has the authority to limit this term and, thereby, deny the right to petition guaranteed by Chapter 36, Water Code.*

Emerald Underground Water Conservation District commented that proposed §356.13 is too broad. The District stated it could lose the trust of its member landowners if all information collected is divulged to the board. *The board makes no changes based on this comment. Section 356.13 is consistent with §36.109, Water Code.*

Emerald Underground Water Conservation District, North Plains Groundwater Conservation District, and the Texas Alliance of Groundwater Districts commented that current §356.10(c) requires the executive administrator to give 30 days notice to the parties involved in a petition of conflict. The Districts would like this to remain at 30 days, instead of the 15 days proposed by the board. *The board makes no changes based on this comment. While the board would prefer to leave the rule as is, HB 1763 revised §36.1072(g), Water Code, to require the board to resolve a conflict by the 60th day after the date mediation is complete, if mediation is not successful. The board would only be able to take action in a public meeting. In order for the board's staff to have sufficient time to prepare the issue, post the meeting pursuant to the Open Meetings Act, and provide the board with sufficient time to consider the matter before taking action, it is necessary to reduce the amount of notice time to the district and regional water planning group.*

Hemphill County Underground Water Conservation District commented that the rules should clarify that newly adopted management plans only need to address desired future conditions and managed available groundwater if the desired future conditions have been adopted through the joint planning process. The District recommended amending the definition of "administratively complete" to state that management plans do not need to address these items if the joint planning is not complete at the time the management plan is submitted. *The board makes no changes based on this comment. This concern*

is addressed, due to another comment from the District, by changes to §356.5(a).

Hemphill County Underground Water Conservation District commented that the proposed definition of "conflict" in §356.2(6) should not be based on managed available groundwater because that information will not be in current management plans or the state water plan. Instead, the District recommended the definition be amended to qualify that a conflict exists only if managed available groundwater is identified in both the state water plan and affected management plan. *The board makes no changes based on this comment. While the board understands that managed available groundwater will not be addressed in current plans, the board believes it is the intent of HB 1763 to use this value as the possible source of conflict between management plans and the state water plan.*

Hemphill County Underground Water Conservation District commented that the definition of "desired future conditions" in §356.2(8) should not include a requirement to quantify the conditions. The District stated the definition should be open-ended and should include concepts such as water quality and changes over time. *The board makes changes based on this comment. The board accepts the addition of water quality and the concept that the desired future conditions may change over time. However, the board does not remove the quantification requirement because the value must be quantified in order for the board to provide the districts with the managed available groundwater, as required by law.*

Hemphill County Underground Water Conservation District commented that §356.3 should be revised to state that districts with "certified" management plans under the old rules do not need to resubmit their management plans for "approval." Lost Pines Groundwater Conservation District made a similar comment that the rules were not clear about the need to resubmit "certified" plans for "approval." The District asked if this impacted rules adopted by districts. *The board makes no changes based on this comment. The rules do not require districts to resubmit management plans that were certified within the past five years for the new approval process. Further, these rules have no impact on administrative rules adopted by districts.*

Hemphill County Underground Water Conservation District commented that §356.4 should take into account the fact that the desired future conditions may not be identified at the time a management plan is submitted for approval. The District recommended language be added to §356.5(a)(1)(H) and §356.5(a)(5)(A) to state this. *The board makes changes based on this comment. Specifically, the board adds language to both sections to state that the requirements do not apply if the desired future conditions have not been identified yet, since the districts have until 2010 to make such identification.*

Hemphill County Underground Water Conservation District commented that §356.6 should be amended to make it clear the districts do not need to provide evidence of the desired future conditions if such conditions have not yet been identified. *The board makes changes based on this comment. Specifically, the board amends §356.6(a)(5) to make it clear the requirement does not apply if the desired future conditions have not yet been identified.*

Hemphill County Underground Water Conservation District commented that §356.7 should be amended to make it clear that the criteria for management plan "approval" is no different than the previous management plan "certification" process. The District

also recommended that the rule be amended to clarify that management plans that have current "certifications" do not need to be resubmitted for approval. *The board makes no changes based on this comment. The rules do not require certified management plans to be resubmitted under the new approval process until such time as the management plans are amended or readopted by the districts, in accordance with Chapter 36, Water Code.*

Hemphill County Underground Water Conservation District commented that §356.10 should be amended to state that districts may also file petitions alleging a conflict with the state water plan. The District also recommended amending the section to clarify that board action is not warranted for all conflicts between the state water plan and a management plan but only for conflicts requiring resolution. *The board makes no changes based on this comment. Section 356.10 is consistent with §36.1072(g), Water Code, which does not provide districts with the ability to file petitions. Instead, this ability, which the District correctly pointed out is from §16.053, Water Code, is addressed by the board in §357.15 of its rules.*

Hemphill County Underground Water Conservation District commented that the party opposing a claim of conflict between a management plan and the state water plan should be given the opportunity to argue and submit briefs, before the board makes a determination. The District commented that districts and parties need more time to respond. *The board makes no changes based on this comment. The board's rules on handling conflict are consistent with §36.1072(g), Water Code. Due to HB 1763, the board only has 60 days to resolve a conflict after mediation between the parties has proven unsuccessful. The board will give the districts and parties every chance possible to submit information on their positions, but the 60-day deadline makes it too difficult for the board to place timelines for such activities in the rules.*

Hemphill County Underground Water Conservation District commented that §356.11 should be amended to establish workable standards for determining if desired future conditions are reasonable and describe the extent to which the board may revise the conditions. *The board makes changes based on this comment. Section 356.11 is based on HB 1763 and the board is hesitant to go beyond the scope of HB 1763 without clear legislative intent to guide the rules. However, the board revises its definition of "desired future condition" in §356.2(8) to provide greater guidance on what desired future conditions must state in order for the board to be able to calculate the "managed available groundwater" pursuant to §36.108, Water Code.*

Hemphill County Underground Water Conservation District commented that §356.13 should be amended to state that the TWDB will reimburse districts for the cost of providing the data upon request. *The board makes no changes based on this comment. The language of §356.13 is based on HB 1763, which does not contain any language about reimbursement.*

High Plains Water District commented that the definition for "desired future conditions" in §356.2(29) provides a list of examples of quantified measures. The District asked if this list is exclusive or if districts may use some other quantified value, such as percentage of demand. The District commented that criteria should be provided to identify what quantified measures will be acceptable. *The board makes changes based on this comment. The examples of quantified measures in the definition are not exclusive and districts may use other quantified values. House Bill 1763 puts the responsibility of developing the desired future conditions on the groundwater conservation districts. Therefore,*

the board will not provide specific criteria that may limit the options of the districts. However, the board revises its definition of "desired future condition" in §356.2(8) to provide greater guidance on what desired future conditions must state in order for the board to be able to calculate the "managed available groundwater" pursuant to §36.108, Water Code.

High Plains Water District commented that the definition for "inflows" in §356.2(13) is confusing. The District asked if this definition means only the flows from one aquifer into another aquifer and if it includes inflows that come across political boundaries. *The board makes no changes based on this comment. The definition in §356.2(13) is a direct quote of the definition HB 1763 placed in §36.001(27), Water Code. Since HB 1763 specifically defined "inflows," the board will not deviate from that definition.*

High Plains Water District commented that the definition for "recharge" in §356.2(20) does not appear to be consistent with §36.1071(e)(3)(C), Water Code. The definition adds confusion and muddles the use of the term. The definition needs to be more precise. *While the board understands the concerns stated in this comment, the board makes no changes to the definition. House Bill 1763 did revise §36.1071(e)(3)(C) to require districts to estimate the annual amount of recharge from precipitation. However, the bill also added a definition of "recharge" at §36.001(26), Water Code, that is broader than just recharge from precipitation. The board has used the definition from §36.001(26) for its rules to be consistent with HB 1763.*

High Plains Water District commented that the definition for "total aquifer storage" in §356.2(21) seems to be the same as the definition the board considered in 2004 for "existing total useable groundwater," which the District said was too vague. The District asked what "capable of producing" means and stated that production depends on the user and the use to which the water is put. Production will also change over time. What is possible in 2005 should be eclipsed by what is possible in 2025. The proposed definition puts the term in the political arena, instead of the scientific arena. Also, this does not appear to be a required element of the groundwater management plans under HB 1763. *The board makes no changes based on this comment. While the term is not required to be in districts' management plans, many districts do use the term, so the board will define it to ensure consistency.*

High Plains Water District commented that §36.109 of the Water Code states districts may collect information that the board believes is needed. However, §356.13 says districts shall provide information requested by the executive administrator. This is not consistent. The "shall" should be "may." *The board makes no changes based on this comment. Section 36.109, Water Code, was amended by HB 1763. While the section continues to state that a district "may" collect any information that its board deems necessary, the amendment adds that districts "shall," at the request of the executive administrator, provide any data collected by the district in a format acceptable to the executive administrator. Section 356.13 states that the district "shall" provide any data collected upon written request of the executive administrator. The section does not require districts to collect data. It simply follows the language of §36.109 in requiring districts to provide data already collected upon request from the executive administrator.*

High Plains Water District, Mesa Underground Water Conservation District, and WaterTexas commented that the definitions for "amount of groundwater being used" and "discharge" appear to be similar and redundant. *The board agrees with this com-*

ment but makes no changes based on it. The term discharge was defined by HB 1763. However, HB 1763 did not amend §36.1071(e)(3)(B), Water Code, which still requires districts to estimate the "amount of groundwater being used" on an annual basis. The board chooses not to replace this with "discharge" when the legislature appears to have made the deliberate decision not to do so.

Lost Pines Groundwater Conservation District, represented by Robert S. Kier Consulting at the public hearing, commented that the timing of the new requirements for management plan content is not clear. While the desired future conditions must be identified by 2010, the District asked when the other elements will be required. *The board makes no changes based on this comment. Unless a new requirement has an effective date stated in the law, HB 1763 went into effect on September 1, 2005. The board believes the new content required in management plans by HB 1763 must be included in any management plans submitted on or after September 1, 2005, unless the law states otherwise.*

Lost Pines Groundwater Conservation District commented that §36.1072(c)(1), Water Code, does not allow the executive administrator to revoke certification or approval of a management plan, but Chapter 36, Water Code, does allow the executive administrator to require revisions in some situations. The district asked what this means and when the plan must be revised. *The board makes no changes based on this comment. House Bill 1763 amended the conflict resolution process of Chapter 36, Water Code. Section 36.1072(g), Water Code, requires the board to resolve a conflict if the parties were unable to do so through mediation. However, to resolve the conflict, the board does not revoke or suspend approval of a groundwater management plan.*

Lost Pines Groundwater Conservation District commented that it was not clear in §356.5(a)(7) what it means for districts to consider the water supply needs and water management strategies in the state water plan. The District asked if the management plans should just discuss these items or treat the requirement as mandatory. *The board makes no changes based on this comment. House Bill 1763 revised §36.1071(e)(4), Water Code. The language in §356.5(a)(7) is pulled from §36.1071(e)(4). The law now only requires the districts to consider the water supply needs and water management strategies in the state water plan. The board would prefer that districts did discuss these items in their management plans so it is possible to determine if the items were considered.*

Lost Pines Groundwater Conservation District commented that the adopted state water plan is a year or more behind the management plans. The District asked if the board can adjust so that management plans are not required to be consistent with an older, outdated state water plan. The District recommended a mechanism that would allow substitution of more current information with approval of the executive administrator. *The board makes no changes based on this comment. As stated above, management plans are not required to be consistent with the adopted state water plan. Instead, §36.1071(e)(4), Water Code, requires the districts to simply consider the water supply needs and water management strategies in the adopted state water plan. Since the law requires the districts to consider the adopted state water plan, the board cannot eliminate this requirement.*

Lost Pines Groundwater Conservation District commented that the board should provide guidelines on how districts determine quantitative desired future conditions of their groundwater resources. The district also commented that the board should tell districts how the conditions tie to the managed available ground-

water. *The board makes changes based on this comment. Section 36.108, Water Code, places the responsibility of determining the desired future conditions of groundwater resources on the groundwater conservation districts, through a joint planning process within each groundwater management area. The board would exceed its statutory authority if it attempted to regulate or guide this process through rule. However, the board revises its definition of "desired future condition" in §356.2(8) to provide greater guidance on what desired future conditions must state in order for the board to be able to calculate the "managed available groundwater" pursuant to §36.108, Water Code.*

Lost Pines Groundwater Conservation District commented that §356.5(a)(1) states that management goals must be addressed "as applicable" but §356.5(a) states that each listed element must be addressed. The District asked if this means management plans that do not address these new required elements are now out of compliance with the Texas Water Code and, if so, the District asked what the remedy is. *The board makes changes based on this comment. The board removes the phrase "as applicable" from §356.5(a)(1) to avoid confusion. As the District points out, §356.5(a) has been amended to require Districts to address each element in §356.5(a) and the "as applicable" conflicts with this requirement. As for the District's questions, the board replies that current management plans that do not address the new required elements are not required to be resubmitted earlier than their five year approval cycle. When a management plan is due for approval, it will need to address these required elements.*

Lost Pines Groundwater Conservation District commented that the definition for "managed available groundwater" in §356.2(14) suggests a permissive upper limit to the amount of groundwater that may be permitted by a district. However, the District commented that §36.1132, Water Code, is not addressed in the rule. This law requires districts, to the extent possible, to issue permits up to the point that the total volume of groundwater permitted equals the managed available groundwater. The District stated that this law makes the managed available groundwater value both the minimum and the maximum a district may permit. The District recommended the board address this in its rules. *The board makes no changes based on this comment. Permitting is not addressed by these rules, nor is it an area over which the board has authority. The board's definition of "managed available groundwater" is consistent with §36.001(25), Water Code, and is used only for purposes of the districts' management plans, not permitting.*

Mesa Underground Water Conservation District commented that "recharge" is the combination of inflows and groundwater percolation. The definition proposed in §356.2(19) should be more specific. *The board makes no changes based on this comment. The definition for "recharge" that was proposed is directly from HB 1763. To be consistent with state law, the board will mirror the definition in §36.001(26), Water Code.*

Mesa Underground Water Conservation District commented that it measures groundwater on a monthly basis. It is difficult to meet the requirements in §356.5 to provide water availability and use on an annual basis because of fluctuation. The District asked if the estimates could be on a monthly basis. *The board makes no changes based on this comment. While the board understands that groundwater use and recharge do fluctuate, Chapter 36 of the Water Code requires estimations on an annual basis and the rules should be consistent with the statutory requirements.*

Monthly estimates may be provided as long as annual estimates are included.

North Plains Groundwater Conservation District commented that §356.8 should require the executive administrator to provide a district with a copy of the executive administrator's response to the district's points of appeal. Specifically, the District recommended adding the phrase "and shall provide a copy of the response to the district" to the last sentence of §356.8(a). *The board makes changes based on this comment and adopts the phrase as recommended by the District.*

North Plains Groundwater Conservation District commented that §356.10 should be amended to make it clear that a copy of any petition from a regional water planning group is to be forwarded to the district. *The board makes no changes based on this comment. The rule does require petitions from any source to be provided to the affected district and regional water planning groups.*

North Plains Groundwater Conservation District commented that §356.10(d) should read "If the board requires a revision to the district's approved management plan, the board shall provide information to the district on the revisions that are required and why." *The board accepts and adopts this grammatical change.*

North Plains Groundwater Conservation District commented that §356.12 should include technical assistance on data tabulation and formatting. *The board makes changes based on this comment. The phrase "including basic data collection and reporting methodology" is added at the end of the last sentence of §356.12.*

North Plains Groundwater Conservation District commented that data collected by the districts is not always complete or useful, if taken out of context. The District recommended that §356.13 require districts to provide only general groundwater information such as static water level measurements, water quality analysis, and other data tabulated in a district-wide monitoring program. *The board does not make changes based on this comment. While the board understands that data must be used in context, §356.13 is taken from §36.109, Water Code, as amended by HB 1763.*

Panhandle Groundwater Conservation District commented that the board should add "reporting" to §356.12 as something on which the TWDB provides training and technical assistance. *The board makes changes based on this comment. The board amends §356.12 to state that the board will provide training on basic data collection and reporting methodology.*

Panhandle Groundwater Conservation District commented that the board should add "the executive administrator shall provide to the districts a list of acceptable formats for reporting by the districts" to §356.13. *The board agrees with this comment and adds the sentence as recommended.*

Rolling Plains Groundwater Conservation District commented that §356.11 is not consistent with §36.108(d-1) and (d-2), Water Code, because these statutory provisions require the districts to develop the desired future conditions but the "shall" in §356.11 implies that the board can dictate the desired future conditions. "Shall" should be replaced with "may." *The board makes no changes based on this comment. While it is true that §36.108(d-1) and (d-2) place authority for determining the desired future conditions on the groundwater conservation districts, §36.108(n), Water Code, states that districts "shall prepare a revised plan in accordance with the development board recommendations" if the board finds that the conditions require revision*

after receiving a petition to that effect. The language in §356.11 is consistent with the language from HB 1763.

South Plains Underground Water Conservation District commented that §356.4 should be revised. The District commented that a better approach is to require regional water planning groups considering groundwater from a district to first inform the district prior to developing a regional water plan. *The board makes no changes based on this comment. The board will be providing the managed available groundwater value to the appropriate regional water planning groups at the same time it is provided to the districts. The regional water planning process encourages collaboration with all affected entities. The amendment to §356.4 is a catch-all to ensure that planning information is shared and used as much as possible.*

South Plains Underground Water Conservation District commented that §356.5 should consider the limitations with which districts must deal. The District commented that the requirement to estimate recharge from precipitation is difficult because recharge of the Southern Ogallala occurs from precipitation, irrigation return flows, and upward leakage from the underlying Cretaceous. The District's estimates do not distinguish the recharge from precipitation alone. With no GAM for the Edwards-Trinity High Plains and few reliable investigations of the aquifer, the requirement in §356.5 is a challenge. *The board makes no changes based on this comment. House Bill 1763 specifically amended §36.1071(e)(3)(C), Water Code, to require the estimate of recharge be recharge from precipitation. The board does not have the authority to limit this requirement.*

The Texas Alliance of Groundwater Districts commented that the definition of "total aquifer storage" uses the term "specific yield." The general definition of specific yield is the ratio of the volume of water that drains from a saturated rock due to gravity to the total volume of the rock. Calculating the volume of water and the total saturated rock aquifer-wide may prove an impossible task for some aquifers. The Alliance recommended the rules provide a method for calculating the specific yield of each aquifer and provide a separate method for calculating specific yield of confined zones and unconfined zones. *The board makes no changes based on this comment. The difference between confined zones and unconfined zones is negligible. Therefore, the board does not revise the definition as proposed. Board staff is available to provide technical assistance in making these calculations.*

The Texas Alliance of Groundwater Districts commented that the changes to §356.10 do not seem to conform to the new definition of "conflict" in §356.2(6). The Alliance recommended changes be made to §356.10 to address conflicts with the desired future condition of the aquifer. *The board makes no changes based on this comment. The language in §356.10 about conflicts is consistent with the language from HB 1763.*

WaterTexas commented that the rules do not provide direction on what constitutes "reasonableness" as it relates to desired future conditions. WaterTexas pointed out that the rules and the law allow a person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area to file a petition with the board appealing the approval of the established "desired future conditions" of the groundwater resources. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.

WaterTexas recommended adding a definition of "reasonable" to the rules and tying that definition to "conflict" and "desired future condition." WaterTexas warned that a narrow interpretation of HB 1763 may cause the board to fail in its broader and more fundamental duty to manage water resources of the state in the public interest and to provide for the orderly development, management, and conservation of water resources. Without guidance on establishing desired future conditions, districts and planning groups may establish conditions haphazardly, which will foster disputes. *The board makes no changes based on this comment. If the board were to add "reasonableness" to the definition of conflict, it would exceed its statutory authority. Currently, §36.108, Water Code, authorizes the board to determine if the desired future condition of a water resource is reasonable only if it is challenged by a district, a regional water planning group, or a person with a legally defined interest in the groundwater. If the board were to include a determination of "reasonableness" in the conflict resolution process, it would be reviewing the reasonableness of the desired future conditions without receiving a petition on this issue, which goes beyond the scope of HB 1763.*

WaterTexas commented that the board should add "and no conflict has been identified by the board" to the definition for "administratively complete" in §356.2(1). *The board makes no changes based on this comment. A review of a management plan to ensure no conflict exists goes beyond the scope of an administrative review and would nullify the term as the board uses it in its rules.*

WaterTexas commented that the board should add "in a unified way" after "groundwater" in the definition of "conjunctive surface water management issues" in §356.2(7). *The board makes no changes based on this comment. Conjunctive use is not necessarily the unified use of groundwater and surface water. Instead, it is the complementary use of those water sources.*

WaterTexas commented that the board should consider the well established and growing practice of groundwater rights transfers, in the form of leases, sales, and severances, if it changes the definition of a "person with a legally defined interest in groundwater." WaterTexas recommended amending the definition, in §356.10(a), to include a person who has a groundwater right or a legal interest in an authorization or application pending with a district. *The board makes no changes based on this comment. The board has not altered the definition of "person with a legally defined interest in groundwater." Further, the definition used in the rules is not exhaustive and may include the interests WaterTexas raises.*

WaterTexas commented that the board should add the concept of reasonableness to the definition for "desired future condition" in §356.2(8). WaterTexas also recommended adding "to be stated in standard hydrogeologic terms" to the definition and deleting the list of examples so that the list is not considered exhaustive. *The board makes no changes based on this comment. The list of examples is not exhaustive but is merely a short list of examples for illustration purposes. The desired future conditions are to be determined by the districts. The board has revised its definition of "desired future condition" in §356.2(8) to provide greater guidance on what desired future conditions must state in order for the board to be able to calculate the "managed available groundwater" pursuant to §36.108, Water Code.*

WaterTexas commented that the board should add "including, with respect to the political boundaries of the unit being referenced, flows into an aquifer from the same aquifer or another formation that lies outside of such political boundaries" to the end

of the definition for "inflows" in §356.2(13). *The board makes no changes based on this comment. The definition in the rules is consistent with HB 1763 and the proposed addition goes beyond that statutory definition.*

WaterTexas commented that the board should delete "the water table of" from the definition of "Recharge" in §356.2(19) and add "including inflows" to the end of the definition. *The board makes no changes to the rules based on this comment. The definition in the rules is from HB 1763 and the board will stay consistent with HB 1763.*

WaterTexas recommended adding "and this subchapter" to the end of §356.5(a)(1)(H). *The board makes no changes based on this comment. The board's subchapter of rules does not set the process for establishing the desired future conditions of groundwater resources. Therefore, such an addition would be inappropriate.*

WaterTexas commented that the board should add "management objectives must be consistent with the Water Code" before the last sentence of §356.5(a)(2). *The board makes no changes based on this comment. While the board agrees that management objectives should be consistent with the Water Code, the board does not regulate the content of management plans. Its role is to approve those that meet the requirements of the Water Code.*

WaterTexas recommended adding "and this subchapter" to the end of §356.5(a)(5)(A). *The board makes no changes based on this comment. The board's subchapter of rules does not set the process for establishing the desired future conditions of groundwater resources. Therefore, such an addition would be inappropriate.*

WaterTexas commented that "used within" should be deleted from §356.5(a)(5)(B) and "discharged from" should be added in its place. WaterTexas also recommended adding "categorized and quantified by type" to the end of §356.5(a)(5)(B). *The board makes no changes based on this comment. The language from §356.5(a)(5)(B) is directly from §36.1071(e)(3)(B), Water Code.*

WaterTexas recommended deleting "from precipitation, if any" from §356.5(a)(5)(C) and adding "categorized and quantified by type" to the end of the section. *The board makes no changes based on this comment. The language from §356.5(a)(5)(C) is directly from §36.1071(e)(3)(C), Water Code.*

WaterTexas commented that §356.5(a)(5)(D) and (E) should be deleted. *The board makes no changes based on this comment. Those provisions are required by §36.1071(e)(3)(D) and (E), Water Code.*

WaterTexas commented that the board should require consideration of water supply needs and water management strategies, in §356.5(a)(7), to include analyzing how each major element of the management plan is either not applicable to, consistent with, or supportive of the water supply needs and water management strategies in the adopted state water plan. *The board makes no changes based on this comment. The language of §356.5(a)(7) comes from §36.1071(e)(4), Water Code. The board does not have the authority to require such analysis from the districts.*

WaterTexas recommended adding "for purposes of this subsection, each district shall consider any professionally prepared and submitted site-specific information provided to the district by a person with a legally defined interest in groundwater in a district, and shall provide the same to the executive administrator for review and comment before submitting the management plan for

approval" to the end of §356.5(b). *The board makes no changes based on this comment.* Section 36.1071(b) of the Water Code states districts shall develop their management plans using the best available data and §36.1071(h), Water Code, states the districts shall use the groundwater availability modeling information provided by the executive administrator together with any available site-specific information that has been provided by the district to the executive administrator for review and comment before being used in the plan. From this language, it is clear to the board that the districts determine what site-specific information they want to use, subject to the executive administrator's comment. *The board would exceed its authority if it forced the districts to consider sources of information beyond the scope of the Water Code.*

WaterTexas commented that the board should add §356.6(a)(6) to require one hard copy of all site-specific information considered or used by the district in developing the plan or the desired future conditions. *The board makes no changes based on this comment.* Section 36.1071(h) of the Water Code already requires the districts to submit their site-specific information to the executive administrator for comment and §36.108, Water Code, does not require such an action for developing the desired future conditions.

WaterTexas recommended that §356.7(a) be amended to require that the executive administrator determine that no conflicts exist when approving a management plan. *The board makes no changes based on this comment.* Section 36.1071(e)(4), Water Code, has been amended to simply require the districts to consider the state water plan. Also, §36.1072(b), Water Code, allows the executive administrator to waive a conflict if conditions justify a waiver.

WaterTexas asked what standards would be used by the executive administrator when considering a waiver of the requirement to consider water supply needs and water management strategies in the state water plan, as described in §356.7(a). WaterTexas also asked if there would be an opportunity for interested parties to contest waivers granted. *The board makes no changes based on this comment.* The board declines to establish standards for the waiver in the rules because it has not had sufficient time to determine what type of issues will arise justifying a waiver. Further, the law does not provide a mechanism for interested parties to contest a waiver.

WaterTexas commented that the board should replace "may submit" with "shall submit" in §356.7(b). WaterTexas also commented that the rule should require districts to revise management plans based on the executive administrator's written comments, hold at least one public meeting in a central location, consider all comments submitted, and submit the revised plan to the board. *The board makes no changes based on this comment.* The process for denial of approval is set by §36.1072(f), Water Code. The rules are in compliance with this subsection, which requires the executive administrator to provide the district with written reasons for the denial. The law goes on to state that the district "may submit" a revised management plan for review and approval, no later than the 180th day after the date the district receives notice that its management plan has not been approved. It is at the district's discretion to submit a revised plan. If the district revises its plan, it must follow the adoption procedures of Chapter 36, Water Code.

WaterTexas commented that persons with a legally defined interest in groundwater in a district should be permitted to submit briefs to the board when the board is handling an appeal pur-

suant to §356.8(a). *The board makes no changes based on this comment.* Chapter 36, Water Code, provides mechanisms for persons with a legally defined interest in groundwater in a district to object to a management plan or actions of that district. However, the Water Code does not provide such a mechanism in the approval process of management plans. Therefore, the board believes it would exceed its statutory authority to put such a mechanism in place. The board will make its decision in an open meeting and interested parties may be invited to speak during the board's deliberation.

WaterTexas recommended amending §356.10(b) to say that the executive administrator must find that the petition reasonably sets forth the nature of the conflict and identifies the specific sections and provisions of the state water plan and the management plan that are in conflict. *The board makes no changes based on this comment.* Section 356.10(a) requires the petition to state the nature of the conflict and to identify the specific sections of the state water plan and the management plan that are in conflict. Section 356.10(b) addresses what steps the executive administrator will take if he finds that a true conflict has been identified.

WaterTexas commented that §356.10(c) should be amended to state that the executive administrator will include the recommended resolution of the conflict and the reasons for the recommendations in the notice sent to the parties. WaterTexas recommended allowing the parties to respond in writing and for the board to consider all responses. Lastly, WaterTexas recommended adding "but are not limited to" after "Resolution may include" in the last sentence of the subsection. *The board makes no changes based on this comment.* If the executive administrator has a recommendation at the time the notice is sent out, he will attempt to include it in the notice. However, due to the short time the board has to resolve the conflict in the event mediation is unsuccessful, the executive administrator may not have a recommendation until after notice has been sent. The board will resolve the conflict at an open meeting, so interested parties will still be able to hear the recommendation and the reasons for the recommendation. Since the executive administrator may not have time to produce a recommendation before the notice is sent out, the parties will likewise not have the time to respond to the recommendation in writing. The board will address conflict resolution in an open meeting and the parties to the conflict will have an opportunity to address the board.

WaterTexas commented that §356.13 should be amended to add "including professionally prepared and submitted site-specific information received by the district" after "data collected by the district." *The board makes no changes based on this comment.* The rule applies to all data collected by the district, including professionally prepared data. The board sees no reason to specify just that type of information.

The amendments and new sections are adopted under the authority of the Texas Water Code §6.101 and Chapters 16 and 36, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board and for administration of the groundwater management plan approval process and the regional water planning process.

The statutory provisions affected by the amendments and new sections are Texas Water Code Chapters 16 and 36.

§356.2. *Definitions of Terms.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code, Chapter 36 that are not defined here shall have the meanings provided in Chapter 36.

(1) Administratively complete--A plan is considered administratively complete when it contains the information required by §36.1071(a) and (e) of the Texas Water Code.

(2) Amount of groundwater being used--The quantity of groundwater withdrawn or flowing from an aquifer naturally or artificially on an annual basis.

(3) Adopted state water plan--A water plan developed pursuant to Texas Water Code, §16.051 and which has been adopted by the board.

(4) Artificial recharge--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(5) Board--Texas Water Development Board.

(6) Conflict--A situation where the managed available groundwater identified in a management plan or the adopted state water plan is not the managed available groundwater based on the desired future conditions set by the groundwater conservation districts in the groundwater management area.

(7) Conjunctive surface water management issues--Issues relating to the active use of both surface water and groundwater to achieve increased water supply or enhanced water quality.

(8) Desired future conditions--The desired, quantified condition of groundwater resources (such as water levels, water quality, spring flows, or volumes) at a specified time or times in the future or in perpetuity, as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process. Desired future conditions have to be physically possible, individually and collectively, if different desired future conditions are stated for different geographic areas overlying an aquifer or subdivision of an aquifer.

(9) Discharge--The amount of water that leaves an aquifer by natural or artificial means.

(10) District--Any district or authority created under Texas Constitution, Article III, §52 or Article XVI, §59 that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(11) Estimates--Calculations using best available data and methodologies specified in the management plan such that the quantifications will be reasonable for use by the district and can be tracked over time.

(12) Executive administrator--The executive administrator of the board.

(13) Inflows--The amount of water that flows into an aquifer from another formation.

(14) Managed available groundwater--The amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer.

(15) Management goals--The qualitative and quantitative ends toward which a district directs its efforts.

(16) Management plan--The groundwater management plan required pursuant to Texas Water Code, §36.1071.

(17) Most efficient use of groundwater--Those practices, techniques and technologies that the district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(18) Person with a legally defined interest in groundwater in a district--Includes, but is not limited to, a person who owns land or groundwater rights in the district, has a legal interest in a well in the district, or has authorization from or an application pending with the district to produce groundwater.

(19) Projected water demand--The quantity of water needed per annum for beneficial use during the period covered by the management plan. The demands shall be projected for the types of use that are included in the state water plan. Each type of use may be subdivided into sub-types by the district.

(20) Recharge--The amount of water that infiltrates to the water table of an aquifer.

(21) Surface water management entities--Political subdivisions as defined by Texas Water Code, Chapter 15, and identified from Texas Commission on Environmental Quality records which are granted authority to store, take, divert, or supply surface water either directly or by contract under Texas Water Code, Chapter 11, for use within the boundaries of a district.

(22) Total aquifer storage--The total calculated volume of groundwater that an aquifer is capable of producing, which is calculated by multiplying the current volume of the aquifer by its specific yield at the time of submitting the management plan.

§356.5. Required Content of Management Plan.

(a) The management plan shall contain the following elements. If the management plan does not contain one or more of the listed elements, it must explain how the required element is either inappropriate or not cost-effective:

(1) management goals:

(A) providing the most efficient use of groundwater;

(B) controlling and preventing waste of groundwater, which may include the waste of groundwater through contamination induced by abandoned oil and gas wells, abandoned water wells, leaking pipelines, and other sources;

(C) controlling and preventing subsidence;

(D) addressing conjunctive surface water management issues;

(E) addressing natural resource issues which impact the use and availability of groundwater, and which are impacted by the use of groundwater;

(F) addressing drought conditions;

(G) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(H) addressing, in a quantitative manner, the desired future conditions of the groundwater resources selected pursuant to §36.108, Water Code, provided such desired future conditions have been identified at the time the management plan is submitted to the board for approval;

(2) management objectives that the district will use to achieve the management goals in paragraph (1) of this subsection. Management objectives are specific, quantifiable, and time-based statements of desired future accomplishments or outcomes, each

linked to a management goal, which set the individual priority for district strategies. Each desired future accomplishment or outcome must be the result of actions that can be taken by district staff or assigns;

(3) performance standards for each management objective. Performance standards are indicators or measures used to evaluate the effectiveness and efficiency of district activities by quantifying the results of actions. Evaluation of the effectiveness of district activities measures the accomplishments of the district. Evaluation of the efficiency of district activities measures how well resources are used to produce an output, such as the amount of resources devoted per unit of accomplishment;

(4) actions, procedures, performance, and avoidance, all specified in as much detail as practicable, necessary to effectuate the management plan, including specifications and the Internet address for all proposed rules;

(5) estimates of:

(A) managed available groundwater in the district, based on the desired future condition selected pursuant to §36.108, Water Code, provided that the desired future conditions have been identified at the time the management plan is submitted to the board for approval;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district, according to the most recently adopted state water plan;

(6) details of how the district will manage groundwater supplies in the district, including a methodology by which a district will track its progress on an annual basis in achieving its management goals; and

(7) consideration of water supply needs and water management strategies included in the adopted state water plan.

(b) The management goals, performance standards and management objectives required in subsection (a)(1), (2), and (3) of this section and the actions, procedures, performance and avoidance specified in subsection (a)(4) of this section are to be established by each district based on specific needs of that district and any parameters established by joint groundwater planning under §36.108, Water Code, when completed. Each district shall use the best information available to it, including an existing groundwater management plan of the district, to make the estimates required in subsection (a) of this section and to develop the plan required by these rules, except that the district shall use the groundwater availability modeling information provided by the executive administrator in conjunction with any available site-specific information provided by the district to the executive administrator for review and comment before being used in the management plan when developing the estimates required in subsection (a)(5) of this section.

§356.6. *Plan Submittal.*

(a) A district requesting approval of its management plan shall submit to the executive administrator the following:

(1) one hard copy and one electronic copy of the adopted management plan;

(2) a certified copy of the district's resolution adopting the plan or other evidence of the district's official action to adopt the plan;

(3) an unbound copy of all existing district rules and the Internet address for all proposed rules;

(4) evidence that the plan was adopted after notice and hearing; and

(5) evidence of the desired future conditions developed from joint planning in the groundwater management area under §36.108, Water Code, provided that the desired future conditions have been identified prior to the management plan being submitted to the board for approval.

(b) The plan or revised plan under §356.7 of this title (relating to Approval) shall be considered properly submitted to the board when all of the items specified in subsection (a) of this section are received in the Austin offices of the board. Once a management plan or amendment is properly submitted to the board, the time lines of §356.7 of this title begin.

§356.8. *Appeal of Denied Management Plan Approval.*

(a) If the executive administrator denies approval of a management plan, a revised management plan, or an amendment to the management plan, the district submitting the plan may appeal the denial to the board by notifying the executive administrator in writing of its intent to appeal, not later than 60 days after receipt of the executive administrator's written notice of denial. Not later than 30 days after filing its notice of intent to appeal, a district shall submit to the executive administrator in writing points of appeal addressing each of the executive administrator's reasons for denial of approval. The written points of appeal shall not exceed 50 pages (double spaced, single sided, 8.5 inches by 11 inches). The board shall hear the appeal at the first regularly scheduled meeting of the board to occur after the expiration of 30 days from the receipt of the district's written points of appeal. Written notice of appeal and written points of appeal shall be considered to be received by the executive administrator when received in the Austin offices of the board. The executive administrator may file a written response to the district's points of appeal and shall provide a copy of the response to the district.

(b) The district shall designate one or more representatives to present the appeal to the board. The district's representatives shall have not more than 20 minutes total to orally present the district's points of appeal to the board at the appropriate time during the meeting set to consider the appeal. After the district presents points the executive administrator or the executive administrator's designee may present an oral response not to exceed 20 minutes in length. The board may extend the presentation time limits. At the close of the executive administrator's response, the district's representative shall be allowed up to five minutes of rebuttal. At the close of rebuttal the board may discuss the matter and direct the executive administrator to either approve or withhold approval of the management plan.

(c) If the board decides not to direct the executive administrator to approve the management plan, the district may request that the matter be mediated. The district and the board may request the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, to

obtain a qualified, impartial third party to mediate the matter. The cost of the mediation services must be specified in the agreement between the parties and the mediation services provider. If the board and the district do not resolve the matter through mediation, the board's decision not to direct the executive administrator to approve the management plan may be appealed to district court in Travis County.

§356.10. Possible Conflicts with State Water Plan.

(a) A person with a legally defined interest in groundwater in a district or the regional water planning group may file a written petition with the board stating that a conflict requiring resolution may exist between the district's approved groundwater conservation district management plan developed under Texas Water Code, §36.1071, and the state water plan developed under Texas Water Code, §16.051. A copy of the petition shall be provided to the district and to the chairperson of any involved regional water planning group. The petition must state:

- (1) the specific nature of the conflict;
- (2) the specific sections and provisions of the approved management plan and the state water plan that are in conflict, and
- (3) the proposed resolution to the conflict.

(b) If the executive administrator determines that a conflict does exist, the executive administrator will provide technical assistance to and facilitate coordination between the affected parties. Coordination may include any of the following processes:

- (1) requiring the affected parties to respond to the petition in writing;
- (2) meeting with representatives from the affected parties to informally mediate the conflict; and/or
- (3) coordinating a formal mediation session between representatives of the affected parties.

(c) If the conflict has not been resolved within 45 days of the date the person or regional water planning group filed the petition with the board, the parties may request mediation. The parties may request the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, to obtain a qualified, impartial third party to mediate the matter. The cost of the mediation services must be specified in the agreement between the parties and the mediation services provider. If the parties cannot resolve the conflict through mediation, the board shall resolve the conflict by the 60th day after the date mediation is completed. To resolve the conflict, the executive administrator will recommend a resolution to the conflict to the board. Before presenting the issue to the board, the executive administrator will provide the affected parties 15 days notice. The board shall adopt a resolution to the conflict at a public meeting. Resolution may include requiring a revision to the ground-

water conservation district's approved management plan or consolidating the resolution with an action being taken by the board pursuant to §357.15 of this title (relating to Interaction with Groundwater Conservation District Management Plans).

(d) If the board requires a revision to the district's approved management plan, the board shall provide information to the district on the revisions that are required and why. The district shall prepare any revisions based on the information provided by the board and hold, after notice, at least one public hearing at a central location within the district. The district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for approval pursuant to this subchapter.

(e) At the request of either the district or the affected regional water planning group, the board shall include in the state water plan a discussion of the conflict and its resolution.

(f) If the district disagrees with the decision of the board, the district may appeal the decision to a district court in Travis County.

§356.12. Training on Data Collection Methodology.

If requested by a district in writing to the executive administrator, the board shall provide the district training on basic data collection methodology and reporting and provide technical assistance, including basic data collection and reporting methodology.

§356.13. Data Collected by the District.

Upon written request of the executive administrator, a district shall provide any data collected by the district to the executive administrator in a format acceptable to the executive administrator. The executive administrator shall provide to the districts a list of acceptable formats for reporting by the districts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2005.

TRD-200505468

Jonathan Steinberg

Deputy Counsel

Texas Water Development Board

Effective date: December 13, 2005

Proposal publication date: September 2, 2005

For further information, please call: (512) 475-2052



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Chart II
Core Residency Questions

Texas Higher Education Coordinating Board rule §21.731 requires each student applying to enroll at an institution to respond to a set of core residency questions for the purpose of determining the student's eligibility for classification as a resident.

PART A. Student Basic Information. All Students must complete this section.

Name: _____ Student ID Number: _____

Date of Birth: _____

PART B. Previous Enrollment. For all students.

1. During the 12 months prior to the term for which you are applying, did you attend a public college or university in Texas in a fall or spring term?

Yes ____ No ____

If you answered "**no**", please continue to **Part C**.

If you answered "yes", complete questions 2-5:

2. What Texas public institution did you last attend? (Give full name, not just initials.)

3. In which terms were you last enrolled? (check all that apply)

____ fall, 200____ ____ spring, 200____

4. During your last semester at a Texas public institution, did you pay resident (in-state) or nonresident (out-of-state) tuition?

____ resident (in-state) ____ nonresident (out-of-state) ____ unknown

5. If you paid in-state tuition at your last institution, was it because you were a resident or because you were a nonresident who received a waiver?

____ resident ____ nonresident with a waiver ____ unknown

IMPORTANT: If you were enrolled at a Texas public institution during a fall or spring semester within the previous 12 months and were classified as a Texas resident, skip to Part I, sign and date this form and submit it to your institution. If you were not enrolled, or if you were enrolled but classified as a nonresident, proceed to Part C.

PART C. Residency Claim.

Are you a resident of Texas? Yes ____ No ____

If you answered yes, continue to **Part D**.

If you answered no, complete the following question and continue to **Part I**.

Of what state or country are you a resident? _____

If you are uncertain, continue to **Part D**.

PART D. Acquisition of High School Diploma or GED.

	Yes	No
1. a. Did you graduate from high school or complete a GED in TX?		
1. b. If you graduated from high school, what was the name/city of the school?		
2. Did you live in TX the 36 months leading up to high school graduation or completion of the GED?		
3. When you begin the semester for which you are applying, will you have lived in TX for the previous 12 months?		
4. Are you a U.S. Citizen or Permanent Resident?		

Instructions to Part D.:

- ◆ If you answered “no” to question 1a or 2 or 3, continue to **Part E**.
- ◆ If you answered “yes” to all four questions, skip to **Part I**.
- ◆ If you answered “yes” to questions 1, 2 and 3, but “no” to question 4, complete a copy of the **Affidavit** provided as an Attachment to this form, skip to **Part I** of this form, and submit both this form and the affidavit to your institution.

PART E. Basis of Claim to Residency. TO BE COMPLETED BY EVERYONE WHO DID NOT ANSWER “YES” TO QUESTIONS 1a, 2, AND 3 OF PART D.

1. Do you file your own federal income tax as an independent tax payer? Yes____ No ____
2. Are you claimed as a dependent or are you eligible to be claimed as a dependent by a parent or court-appointed legal guardian? Yes____ No ____ (To be eligible to be claimed as a dependent, your parent or legal guardian must provide at least one half of your support. A step-parent does not qualify as a parent if he/she has not adopted the student.)
3. If you answered “No” to both questions above, who provides the majority of your support?
Self____ parent or guardian____ other: (list)_____

Instructions to Part E.

- ◆ If you answered “yes” to question 1, continue to **Part F**.
- ◆ If you answered “yes” to question 2, skip to **Part G**.
- ◆ If you answered “no” to 1 and 2 and “self” to question 3, continue to **Part F**.
- ◆ If you answered “no” to 1 and 2 and “parent or guardian” to question 3, skip to **Part G**.
- ◆ If you answered “no” to 1 and 2 and “other” to question 3, skip to **Part H** and provide an explanation.

PART F. Questions for students who answered “Yes” to Question 1 or “Self” to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Are you a U.S. Citizen?					
2. Are you a Permanent Resident of the U.S.?					
3. Are you a foreign national whose application for Permanent Resident Status has been preliminarily reviewed? (You should have received a fee/filing receipt or Notice of Action (I-797) from USCIS showing your I-485 has been reviewed and has not been rejected).					

4. Are you a foreign national here with a visa or are you a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.			
5. Do you currently live in Texas? If you are out of state due to a temporary assignment by your employer, please explain in Part H.	Yes	No	
6. a. If you currently live in Texas, how long have you been living here?			Months Years
b. What is your main purpose for being in the state? If for reasons other than those listed, give an explanation in Section H.	Go to College []		Establish/maintain a home [] Work Assignment []
7. If you are a member of the U.S. military, is Texas your Home of Record? What state is listed as your military legal residence for tax purposes on your Leave and Earnings Statement?	Yes	No	
	State		

	Yes	No
8. Do any of the following apply to you? (Check all that apply)		
a. Hold the title to real property (home, land) in Texas?		
b. Own a business in Texas?		
c. Hold a state or local license to conduct a business or practice a profession in TX?		
9. For the past 12 months, have you: (Check all that apply)		
a. been gainfully employed in TX?		
b. received services from a social service agency that provides services to homeless persons?		
10.		
a. Are you married to a person who could answer "yes" to any part of question 8 or 9?		
b. If yes, indicate which question could be answered yes by your spouse:	Question:	
	Months	Years
c. How long have you been married to the Texas resident?		

Skip **Part G** and Continue to **Part H**.

PART G. Questions for students who answered "Parent" or "Legal Guardian" to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status		
1. Is the parent or legal guardian upon whom you base your claim of residency a U.S. citizen?							
2. Is the parent or legal guardian upon whom you base your claim of residency a Permanent Resident?							
3. Is this parent or legal guardian a foreign national whose application for Permanent Resident Status has been preliminarily reviewed? (He or she should have received a fee/filing receipt or Notice of Action (I-797) from the USCIS showing his or her I-485 has been reviewed and has not been rejected)							
4. Is this parent or legal guardian a foreign national here with a visa or a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.							
5. Does this parent or legal guardian currently live in Texas? If he or she is out of state due to a temporary assignment by his/her employer, please explain in Part H.							
6. a. If he or she is currently living in Texas, how long has he or she been living here?						Months	Years
b. What is your parent's or legal guardian's main purpose for being in the state? If for reasons other than those listed, give an explanation in Section H.	Go to College []					Establish/maintain a home []	
7. If he or she is a member of the U.S. military, is Texas his or her Home of Record? What state is listed as his or her military legal residence for tax purposes on his or her Leave and Earnings Statement?							
	State						

	Yes	No
8. Do any of the following apply to your parent or guardian? (Check all that apply)		
a. Holds the title to real property (home, land) in Texas?		
b. Owns a business in Texas?		
c. Holds a state or local license to conduct a business or practice a profession in TX?		

9. For the past 12 months, has your parent or guardian: (Check all that apply) a. been gainfully employed in TX?		
b. received services from a social service agency that provides services to homeless persons?		
10. a. Is your parent or legal guardian married to a person who could answer "yes" to any part of question 8 or 9? b. If yes, indicate which question could be answered yes by your parent or guardian's spouse: c. How long has your parent or guardian been married to the Texas resident?		
	Question:	
	Months	Years

Part H. General Comments. Is there any additional information that you believe your college should know in evaluating your eligibility to be classified as a resident? If so, please provide it below:

PART I. Certification of Residency. All students must complete this section.

I understand that officials of my college/university will use the information submitted on this form to determine my status for residency eligibility. I authorize the college/university to verify the information I have provided. I agree to notify the proper officials of the institution of any changes in the information provided. I certify that the information on this application is complete and correct and I understand that the submission of false information is grounds for rejection of my application, withdrawal of any offer of acceptance, cancellation of enrollment, or appropriate disciplinary action.

Signature: _____

Date: _____

Chart IV
Documentation to Support Domicile and Residency

The following documentation may be requested by the institution in order to resolve issues raised by responses to the Core Residency Questions. The listed documents may be used to establish that the person is domiciled in Texas and has maintained a residence in Texas continuously for 12 months prior to the census date.

<p style="text-align: center;">Part A</p> <p>Documentation that can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months</p>
<p>1. An employer's statement of dates of employment (beginning and current or ending dates) that encompass at least 12 months. Other documents that show the person has been engaged in activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home) may also be used, as well as documents that show the person is self-employed, employed as a homemaker, or is living off his/her earnings, or through public assistance. Student employment, such as work-study, the receipt of stipends, fellowships or research or teaching assistanceships do not qualify as a basis for establishing a domicile.</p> <p>2. For a homeless person, written statements from the office of one or more social service agencies located in Texas that attests to the provision of services to the homeless person for the 12 months prior to the census date of the term in which the person enrolls.</p>

<p style="text-align: center;">Part B</p> <p>Documentation, which (if accomplished and maintained for the 12 months prior to the census date of the term in which the person enrolls and if accompanied by at least ONE type of document listed in Part C), can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months</p>
<p>1. Title to real property in Texas</p> <p>2. Marriage Certificate with documentation to support that spouse is a domiciliary of Texas</p> <p>3. Ownership of business in Texas with documents that evidence the organization or the business as a partnership or corporation and reflect the ownership interest of the person or dependent's parent.</p> <p>4. State or local licenses to conduct a business or practice a profession in this state.</p>

Part C

Documents that May be Used to Demonstrate Maintenance of a Residence for 12 Months

These documents do not show the establishment of a domicile. They only support a person's claim to have resided in the state for at least 12 months. Activities in Part A and B of this Chart may be used to establish a domicile.

1. Utility bills for the 12 months preceding the census date;
2. A Texas high school transcript for full senior year preceding the census date;
3. A transcript from a Texas institution showing presence in the state for the 12 months preceding the census date;
4. A Texas driver's license or Texas ID card with an expiration date of not more than four years;
5. Cancelled checks that reflect a Texas residence for the 12 months preceding the census date;
6. A current credit report that documents the length and place of residence of the person or the dependent's parent.
7. Texas voter registration card that has not expired.
8. Pay stubs for the 12 months preceding the census date;
9. Bank statements reflecting a Texas address for the 12 months preceding the census date;
10. Ownership of real property with copies of utility bills for the 12 months preceding the census date.
11. Registration or verification from licensor, showing Texas address for licensee;
12. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 months preceding the census date.
13. Lease or rental of real property, other than campus housing, in the name of the person or the dependent's parent for the 12 months preceding the census date.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Open Solicitation for Lamb County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(b), primary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Lamb County, County #140**. Medicaid nursing facility occupancy rates in **Lamb County** exceeded the 90% occupancy threshold for six consecutive months during the period of **May 2005 through October 2005**. The county occupancy rates for each month of that period were: **90.9%, 91.0%, 91.4%, 92.4%, 92.4%, 90.6%**. In accordance with the requirements contained in 40 TAC §19.2324(b), current nursing facility licensees or property owners of currently licensed nursing facilities may apply for an additional allocation of Medicaid beds. The allocation of additional Medicaid beds is restricted to nursing facility beds that are currently licensed and may be converted to Medicaid-certified beds. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(b)(5) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business January 9, 2006, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(b)(6) and (7). If the number of beds allocated under the primary selection process does not reduce the occupancy rate below 90%, DADS will place another public notice in the *Texas Register* in accordance with secondary selection process requirements.

TRD-200505524
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: November 30, 2005

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Agriculture (TDA), announces the issuance of **Request for Proposals (RFP) #303-6-10636**. TBPC seeks a 5 year lease of approximately 14,952 square feet of warehouse space in the Austin area, Travis County, Texas.

The deadline for questions is December 19, 2005, and the deadline for proposals is December 28, 2005 at 3:00 P.M. The award date is February 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=62157.

TRD-200505533
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: November 30, 2005

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Commission on Environmental Quality (TCEQ), announces the issuance of **Request for Proposals (RFP) #303-6-10640**. TBPC seeks a 10 year lease of approximately 7,638 square feet of office/laboratory space in the Austin area, Travis County, Texas.

The deadline for questions is December 16, 2005, and the deadline for proposals is December 30, 2005 at 3:00 P.M. The award date is February 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=62178.

TRD-200505532
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: November 30, 2005

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101., Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/05/05 - 12/11/05 is 18% for Consumer¹/Agricultural/Commercial² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/05/05 - 12/11/05 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 12/01/05 - 12/31/05 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/05 - 12/31/05 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/06 - 03/31/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/06 - 03/31/06 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/06 - 03/31/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The lender credit card quarterly rate as prescribed by §346.101, Tex. Fin. Code¹ for the period of 01/01/06 - 03/31/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/06 - 03/31/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/06 - 03/31/06 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/06 - 03/31/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/05 - 12/31/05 is 7.00% for Consumer/Agricultural/Commercial credit thru \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/05 - 12/31/05 is 7.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

³For variable rate commercial transactions only.

⁴Only for openend credit as defined in §301.002(14), Tex. Fin. Code.

TRD-200505491

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 28, 2005

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Dallas County Credit Union (Dallas) seeking approval to merge with Texans Credit Union (Richardson), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200505544

Harold E. Feeney

Commissioner

Credit Union Department

Filed: November 30, 2005

Texas Commission on Environmental Quality

Notice of Public Meeting on Thursday, January 19, 2006, in Midlothian, Texas Concerning the Texas American Oil State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the intent to take no further action at the site and to delete the site from the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of intent to take no further action at the Texas American Oil State Superfund site (the site) and to delete the site from its listed status on the state Superfund registry. The state registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the ED has determined that due to remedial actions that have been performed, the site no longer presents such an endangerment. This combined notice was also published in the *Midlothian Mirror* on December 7, 2005.

The site was listed on the state Superfund registry in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427). The site, including all land, structures, appurtenances, and other improvements, is located in Midlothian, Ellis County, Texas. The site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The Texas American Oil site is located in an abandoned limestone quarry, approximately three miles north of Midlothian on the west side of Old State Highway 67 in northwest Ellis County, near the Dallas County line. The eight-acre tract was the location of a waste oil recycler, which re-refined used crankcase and transmission oil from 1970 to 1978. When the facility closed in 1978, the wastes were pumped from the three pits near the west end of the facility; the remaining sludge was mixed in place with soil, and the pits were covered with a three-inch layer of asphalt to comply with a Texas Department of Water Resources order. In 1980, the property was leased by a transporter of used oil. Records indicate that operations were shut down that same year but most of the structures, tanks, and stored waste remained on site until at least 1984, when the United States Environmental Protection Agency made an inspection and recommended that Texas American Oil remove all liquids from a sump pit and a 135,000-gallon storage tank and restrict access to those areas. An April 1987 site inspection showed that all tanks and equipment had been removed; however, soil samples from the areas of the structures showed elevated lead concentrations. At the time of the hazard ranking scoring, the contaminants of concern included chloroform, lead, and polychlorinated biphenyls (PCBs).

The remedial actions, conducted from 2002 to 2004, consisted of treatment and/or removal of contaminated soils, sludge, asphalt, liquid, and waste from the site and disposal of this material at an appropriately licensed and permitted off-site disposal facility. The remedial action also included plugging and abandonment of monitoring wells on the site, placement of off-site select fill and topsoil material, and re-vegetation of all disturbed areas of the site.

As a result of the remedial actions that have been performed at the site, the ED has determined that the site no longer presents an imminent and substantial endangerment to public health and safety and the environment. Site conditions have met the residential land use criteria as established by the Texas Risk Reduction Program and the security fence remains on the site. Therefore, no further action is necessary at the site and the site is eligible for deletion from the state registry of Superfund sites as provided by 30 TAC §335.344(c).

The commission will hold a public meeting to receive comment on the proposed deletion of the site and the determination to take no further action. This public meeting will be legislative in nature and is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting is scheduled for 7:00 p.m., Thursday, January 19, 2006, in Council Chambers of Midlothian City Hall, 104 West Avenue E, in Midlothian, Texas.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., January 19, 2006, to Mr. Alvie Nichols, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile (512) 239-2303. The public comment period for this action will end at the close of the public meeting on January 19, 2006.

A portion of the record for this site, including documents pertinent to the proposed deletion of the site, is available for review during regular business hours at the A.H. Meadows Public Library, 921 South Ninth Street, Midlothian, Texas 76065, (972) 775-3417. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information regarding this meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363.

TRD-200505497

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 29, 2005



Notice of Water Quality Applications

The following notices were issued during the period of November 17, 2005 through November 28, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AUC GROUP, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014554001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per

day. The facility will be located approximately one mile southeast of the intersection of Interstate 10 and Sjolander Road in Harris County, Texas.

AZTECA MILLING, L.P. which operates a corn flour mill, has applied for a major amendment to Permit No. WQ0002525000 to authorize an increase in the maximum pH limitation from 9.0 standard units to 12.0 standard units. The current permit authorizes the disposal of process wastewater from the washing and cooking of whole corn combined with lime at a daily average flow not to exceed 300,000 gallons per day via irrigation of 165 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility site and disposal area are located approximately one quarter (1/4) mile west of U.S. Highway 281 on the north side of Chapin Road, north of the City of Edinburg, Hildalgo County, Texas.

CITY OF CLARKSVILLE has applied for a renewal of TPDES Permit No. 10148-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 1.5 miles southeast of the intersection of U.S. Highway 82 and State Highway 37 and approximately 0.75 mile east of Farm-to-Market Road 910 in Red River County, Texas.

GARDEN VALLEY UTILITY COMPANY has applied for a new permit, Proposed Permit No. WQ0014596001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day via subsurface drip irrigation of 5.6 acres of public access golf course-fairway and rough. The facility and disposal site will be located approximately 5,446 feet east-southeast of the intersection of Farm-to-Market Road 1995 and County Road 424, and approximately 2,280 feet north-northwest of the intersection of Farm-to-Market Road 1995 and County Road 422, in Smith County, Texas.

CITY OF LA FERIA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010697002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility is located on South Rabb Road, approximately 0.6 mile South of Business 83 in Cameron County, Texas.

MB WASTEWATER SERVICES L.L.C. has applied for a renewal of TPDES Permit No. 14107-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The plant site is located on the south side of County Road 3405, approximately 1200-1500 feet West of the intersection of Farm-to-Market Road 1571 and County Road 3405 adjacent to the Odell Branch and directly South of the Texas Department of Parks and Wildlife property in Hunt County, Texas.

MARTIN REALTY & LAND, INC. has applied for a major amendment to TPDES Permit No. WQ0012621001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately two miles southeast of the intersection of Farm-to-Market Road 1485 and Farm-to-Market Road 2090 in the Country West Subdivision in Montgomery County, Texas.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014611001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 250 feet north of Sienna Ranch Road and approximately 500 feet east-northeast of Cow Bayou in Fort Bend County, Texas.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014612001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 500 feet south of Sienna Parkway, 465 feet east of Channel 2 and west of the pipeline easement in Fort Bend County, Texas.

STEAMBOAT SHORES OWNERS ASSOCIATION has applied for a renewal of TPDES Permit No. 13659-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,500 gallons per day. The facility is located on the south bank of Lake Fork Reservoir between Penson Spring Branch and Boardtree Branch, approximately 1.2 miles north of the intersection of Farm-to-Market Road 2946 and Farm-to-Market Road 515 in Rains County, Texas.

TRD-200505528

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 30, 2005

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number TX 05-009, Amendment Number 706, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment adds the services provided by licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors as a benefit for the adult Medicaid population. The anticipated effective date for the proposed amendment is December 1, 2005.

The proposed amendment is estimated to result in expenditures for fiscal year (FY) 2006 of \$24,454,290 in federal funds, \$15,846,122 in state funds, with total expenditures of \$40,300,412. The estimated fiscal impact for FY 2007 will result in expenditures of \$36,539,369 in federal funds, \$22,893,567 in state funds, with total expenditures of \$59,432,936.

To obtain copies of the proposed amendment, interested parties may contact Gilbert Estrada, Policy Analyst with Medicaid/CHIP Division, at the Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, or by e-mail at gilbert.estrada@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-200505534

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 30, 2005

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 05-020, Amendment Number 717, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to comply with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The MMA prohibits Medicaid beneficiaries who are

entitled to receive Medicare benefits under Part A or Part B from receiving their pharmacy benefits under the State Medicaid Program, except for specific categories of drugs excluded from coverage in the MMA. The proposed amendment will remove the pharmacy benefits from the State Medicaid Program for these beneficiaries as required by the MMA. The anticipated effective date of the proposed amendment is January 1, 2006.

The proposed amendment is estimated to result in annual aggregate increased costs of approximately \$24,900,000 for fiscal year (FY) 2006, of which approximately \$15,100,000 is federal funds and \$9,800,000 is state general revenue, and approximately \$109,500,000 in increased costs for FY 2007, of which approximately \$67,400,000 is federal funds and approximately \$42,100,000 is state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Lesa Ledbetter by mail at Medicaid/CHIP, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; by telephone at (512) 491-1199; by facsimile at (512) 491-1953; or by e-mail at lesa.ledbetter@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-200505535

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 30, 2005

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-002, Amendment Number 720, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to revise the reimbursement methodology used to make additional payments to high-volume primary care providers (PCPs), specialists, and dentists. The proposed amendment is effective January 1, 2006.

The proposed amendment is estimated to result in annual aggregate spending of approximately \$8.3 million for state fiscal year (SFY) 2006, with approximately \$5.0 million in federal funds and approximately \$3.3 million in state general revenue, and annual aggregate spending of approximately \$12.5 million for SFY 2007, with approximately \$7.6 million in federal funds and approximately \$4.9 million in state general revenue. Funding for payments to high-volume Medicaid providers was originally appropriated by the 77th Texas Legislature, Regular Session, 2001, and was continued by the 79th Texas Legislature, Regular Session, 2005.

To obtain copies of the proposed amendment, interested parties may contact Nancy Kimble by mail at Rate Analysis for Acute Care and Cost Reporting Services, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1363; by facsimile at (512) 491-1983; or by e-mail at nancy.kimble@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200505536

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 30, 2005

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-003, Amendment Number 721, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to revise the reimbursement methodology used to make additional payments to high-volume ambulatory surgical centers (ASCs) and hospital ASCs (HASCs). The proposed amendment is effective January 1, 2006.

The proposed amendment is estimated to result in annual aggregate spending of approximately \$2.3 million for state fiscal year (SFY) 2006, with approximately \$1.4 million in federal funds and approximately \$900,000 in state general revenue, and annual aggregate spending of approximately \$3.5 million for SFY 2007, with approximately \$2.1 million in federal funds and approximately \$1.4 million in state general revenue. Funding for payments to high-volume Medicaid providers was originally appropriated by the 77th Texas Legislature, Regular Session, 2001, and was continued by the 79th Texas Legislature, Regular Session, 2005.

To obtain copies of the proposed amendment, interested parties may contact Nancy Kimble by mail at Rate Analysis for Acute Care and Cost Reporting Services, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1363; by facsimile at (512) 491-1983; or by e-mail at nancy.kimble@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200505537

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 30, 2005



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-004, Amendment Number 722, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to revise the reimbursement methodology used to make additional payments to high-volume birthing centers. The proposed amendment is effective January 1, 2006.

The proposed amendment is estimated to result in annual aggregate spending of approximately \$166,000 for state fiscal year (SFY) 2006, with approximately \$100,696 in federal funds and approximately \$65,304 in state general revenue, and annual aggregate spending of approximately \$250,000 for SFY 2007, with approximately \$151,650 in federal funds and approximately \$98,350 in state general revenue. Funding for payments to high-volume Medicaid providers was originally appropriated by the 77th Texas Legislature, Regular Session, 2001, and was continued by the 79th Texas Legislature, Regular Session, 2005.

To obtain copies of the proposed amendment, interested parties may contact Nancy Kimble by mail at Rate Analysis for Acute Care and Cost Reporting Services, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1363; by facsimile at (512) 491-1983; or by e-mail at nancy.kimble@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200505538

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 30, 2005



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Child Health Plan under Title XXI of the Social Security Act. The purpose of this amendment is to expand the age of eligibility for the Children's Health Insurance Program (CHIP) to include the period from conception to birth.

The proposed amendment is effective September 1, 2006. The proposed amendment is estimated to result in no expenditures in state fiscal year (SFY) 2006. The amendment is estimated to result in annual aggregate expenditures of approximately \$304.1 million for SFY 2007, with approximately \$218.9 million in federal funds and approximately \$85.2 million in state general revenue expenditures.

To obtain copies of the proposed amendment, interested parties may contact Kyna Belcher by mail at Medicaid/CHIP, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200; by telephone at (512) 491-1884; by facsimile at (512) 491-1953; or by e-mail at kyna.belcher@hhsc.state.tx.us.

TRD-200505541

Lee Dickinson

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 30, 2005



Request for Public Comment - Methodology for Determining Caseload Reduction for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2006

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its methodology for determining the TANF caseload reduction from federal fiscal year (FFY) 1995 to FFY 2005. This methodology and its results will be submitted to the federal Administration for Children and Families for use in calculating the caseload reduction credit used in determining compliance with TANF work participation rates for FFY 2006. The methodology will be posted on the HHSC Internet web site at <http://www.hhsc.state.tx.us/research> by December 9, 2005. Written or electronic copies of the methodology can also be obtained by contacting Ross McDonald at (512) 424-6843.

The public comment period begins December 9, 2005 and ends December 23, 2005. Comments must be submitted in writing to Texas Health and Human Services Commission, Center for Strategic Decision Support, Ross McDonald, MC 1950, P.O. Box 13247, Austin, Texas 78711-3247. Comments may also be submitted electronically to "ross.mcdonald@hhsc.state.tx.us."

TRD-200505505

Lee Dickinson

Assistant General Counsel

Texas Health and Human Services Commission

Filed: November 29, 2005



Department of State Health Services

Notice of Amendment Number 38 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 38 provides title changes in specific key organizational positions for which the licensee is required to provide a current resume upon any employment change. Additionally, commitments provided by the licensee for organizational reporting of radiation safety specialist are incorporated by reference.

The department has determined that the amendment of the license and the terms of conditions provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Tounge, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200505522
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 30, 2005

Notice of an Agreed Order Issued on November 22, 2005, on Registrant C & G Chiropractic, Inc.

An Agreed Order is hereby issued by the Department of State Health Services (department) to C & G Chiropractic, Inc. (registration #R20062-001) of Kingwood. A total penalty of \$500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505523
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 30, 2005

Texas Higher Education Coordinating Board

Notice of Inviting Applications for New Awards under the Teacher Quality Grants Program (Public Law 107-110) for Implementation During the Period May 1, 2006 - May 31, 2007

PURPOSE: To provide assistance to universities, colleges, and educational non-profit organizations collaborating with high-need Texas school districts for significant projects designed to improve the quality of instruction and student performance in mathematics and science.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: January 16, 2006

APPLICATIONS AVAILABLE: December 12, 2005

AVAILABLE FUNDS: \$5,600,000

ESTIMATED RANGE OF AWARDS: \$85,000

ESTIMATED NUMBER OF AWARDS: 55 - 60

PROJECT PERIOD: May 1, 2006 - May 31, 2007

BUDGET PERIOD: 13 Months

APPLICABLE REGULATIONS:

(a) Public Law 107-110; Texas Higher Education Grant Administrative Regulations (see Appendix A);

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86;

(c) Audit Requirements under OMB Circular A-133 for public colleges and universities and for independent colleges and universities, and non-profit organizations (see Appendix C); and

(d) OMB Circular A-21: Cost Principles for Educational Institutions; and OMB Circular A-122 for private non-profit organizations; and OMB Circular A-102, Part 80: Subpart A - C, §§80.1 - 80.35 (see Appendix D).

For more information, go to the Teacher Quality website: <http://www.utdanacenter.org/teacherquality/rfp.php>

TRD-200505492
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: November 28, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Livonia, Michigan.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505480
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 28, 2005

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Company Licensing

Application to change the name of NATIONAL INSURANCE UNDERWRITERS to DIRECT NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Nashville, Tennessee.

Application to change the name of HIGHMARK LIFE INSURANCE COMPANY to HM INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Pittsburgh, Pennsylvania.

Application for admission to the State of Texas by UNIQUE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505542
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 30, 2005

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Notice of Reconvening of 2004 Texas Title Insurance Biennial Hearing-Ratemaking Phase

The Commissioner of Insurance will hold a public hearing under Docket No. 2601 on Wednesday, January 25, 2006, at 10:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, and continuing thereafter at dates, times, and places designated by the Commissioner until conclusion. This is notice of the reconvening of the continued Ratemaking Phase of the 2004 Texas Title Insurance Biennial Hearing that was originally set on December 31, 2004, as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9718).

The Commissioner of Insurance has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, §31.021 and Chapters 2501 and 2703, and §2551.003, and pursuant to the Texas Administrative Code, Title 28, Chapter 9. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Gov't Code, Ch. 2001).

TRD-200505481
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 28, 2005

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Texas Lottery Commission

Instant Game Number 638 "Hot Slots"

1.0 Name and Style of Game.

A. The name of Instant Game No. 638 is "HOT SLOTS". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 638 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 638.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 7 SYMBOL, DOLLAR SIGN SYMBOL, HORSE SHOE SYMBOL, LEMON SYMBOL, BANANA SYMBOL, POT OF GOLD SYMBOL, MELON SYMBOL, CHERRIES SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, BELL SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, STAR SYMBOL, COIN SYMBOL, STACK OF BILLS SYMBOL, BAR SYMBOL and WIN SYMBOL.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 638 - 1.2D

PLAY SYMBOL	CAPTION
7 SYMBOL	SEVN
DOLLAR SIGN SYMBOL	MONY
HORSE SHOE SYMBOL	SHOE
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
POT OF GOLD SYMBOL	GOLD
MELON SYMBOL	MELN
CHERRIES SYMBOL	CHRY
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
BELL SYMBOL	BELL
CROWN SYMBOL	CRWN
DIAMOND SYMBOL	DMND
STAR SYMBOL	STAR
COIN SYMBOL	COIN
STACK OF BILLS SYMBOL	DLRS
BAR SYMBOL	BAR
WIN SYMBOL	AUTO
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU
\$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 638 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$100.

I. High-Tier Prize- A prize of \$2,000 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (638), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 638-0000001-001.

L. Pack - A pack of "HOT SLOTS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT SLOTS" Instant Game No. 638 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOT SLOTS" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) Play Symbols. If a player reveals 3 matching play symbols within the same spin, the player wins the prize shown for that spin. If a player reveals a "WIN" play symbol, the player wins the prize shown for that spin automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No four or more like non-winning prize symbols on a ticket.
- C. There will be many at least 4 "near wins" on non-winning tickets.
- D. No duplicate non-winning spins in the exact same order on a ticket.
- E. Non-winning prize symbols will not match a winning prize symbol on a ticket.
- F. When the auto win symbol appears, there will be no duplicate play symbols within that spin.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT SLOTS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOT SLOTS" Instant Game prize of \$2,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOT SLOTS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

- 1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
- 2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
- 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
- 4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HOT SLOTS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HOT SLOTS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 638. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 638 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	771,840	10.42
\$4	643,200	12.50
\$5	128,640	62.50
\$10	64,320	125.00
\$20	80,400	100.00
\$50	32,160	250.00
\$100	13,735	585.37
\$2,000	30	268,000.00
\$25,000	16	502,500.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 638 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 638, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200505482
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 28, 2005



Instant Game Number Number 652 "World Poker Tour \$100,000 Texas Hold 'em"

1.0 Name and Style of Game.

A. The name of Instant Game No. 652 is "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM". The play style is "poker".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 652 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 652.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, Q SPADE SYMBOL, K SPADE SYMBOL, A SPADE SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, Q CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$250, \$500, \$5,000 or \$100,000. The possible red play symbols are: 2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, Q DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL and A HEART SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 652 - 1.2D

PLAY SYMBOL	CAPTION
2 SPADE SYMBOL (black)	TWS
3 SPADE SYMBOL (black)	THS
4 SPADE SYMBOL (black)	FRS
5 SPADE SYMBOL (black)	FVS
6 SPADE SYMBOL (black)	SXS
7 SPADE SYMBOL (black)	SNS
8 SPADE SYMBOL (black)	ETS
9 SPADE SYMBOL (black)	NIS
10 SPADE SYMBOL (black)	TNS
J SPADE SYMBOL (black)	JKS
Q SPADE SYMBOL (black)	QNS
K SPADE SYMBOL (black)	KGS
A SPADE SYMBOL (black)	ACS
2 CLUB SYMBOL (black)	TWC
3 CLUB SYMBOL (black)	THC
4 CLUB SYMBOL (black)	FRC
5 CLUB SYMBOL (black)	FVC
6 CLUB SYMBOL (black)	SXC
7 CLUB SYMBOL (black)	SNC
8 CLUB SYMBOL (black)	ETC
9 CLUB SYMBOL (black)	NIC
10 CLUB SYMBOL (black)	TNC
J CLUB SYMBOL (black)	JKC
Q CLUB SYMBOL (black)	QNC
K CLUB SYMBOL (black)	KGC
A CLUB SYMBOL (black)	ACC
2 DIAMOND SYMBOL (red)	TWD
3 DIAMOND SYMBOL (red)	THD
4 DIAMOND SYMBOL (red)	FRD
5 DIAMOND SYMBOL (red)	FVD
6 DIAMOND SYMBOL (red)	SXD
7 DIAMOND SYMBOL (red)	SND
8 DIAMOND SYMBOL (red)	ETD
9 DIAMOND SYMBOL (red)	NID
10 DIAMOND SYMBOL (red)	TND
J DIAMOND SYMBOL (red)	JKD
Q DIAMOND SYMBOL (red)	QND
K DIAMOND SYMBOL (red)	KGD
A DIAMOND SYMBOL (red)	ACD
2 HEART SYMBOL (red)	TWH
3 HEART SYMBOL (red)	THH
4 HEART SYMBOL (red)	FRH
5 HEART SYMBOL (red)	FVH
6 HEART SYMBOL (red)	SXH
7 HEART SYMBOL (red)	SNH
8 HEART SYMBOL (red)	ETH

9 HEART SYMBOL (red)	NIH
10 HEART SYMBOL (red)	TNH
J HEART SYMBOL (red)	JKH
Q HEART SYMBOL (red)	QNH
K HEART SYMBOL (red)	KGH
A HEART SYMBOL (red)	ACH
\$2.00 (black)	TWO\$
\$5.00 (black)	FIVE\$
\$10.00 (black)	TEN\$
\$15.00 (black)	FIFTN
\$20.00 (black)	TWENTY
\$25.00 (black)	TWY FIV
\$50.00 (black)	FIFTY
\$75.00 (black)	SVY FIV
\$100 (black)	ONE HUND
\$250 (black)	TWO FTY
\$500 (black)	FIV HUND
\$5,000 (black)	FIV THOU
\$100,000 (black)	100 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 652 - 1.2E

CODE	PRIZE
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00, \$100, \$250 or \$500.

I. High-Tier Prize - A prize of \$5,000 or \$100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (652), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 652-0000001-001.

L. Pack - A pack of "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game No. 652 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game is determined once the latex on the ticket is scratched off to expose 50 (fifty) Play Symbols. At each table, use YOUR 2 CARDS and the Community Cards to make your best 5-card poker hand. Do the same with THEIR 2 CARDS. If your best 5-card poker hand beats their best 5-card poker hand at the same table, win the prize for that table. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 50 (fifty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning prize symbols on a ticket.

C. A ticket may only win once in each table for a total of five wins on a ticket.

D. No duplicate tables, in any order, on any ticket.

E. Each table on a ticket will use a deck of fifty-two (52) cards.

F. Listed below is a Glossary of Terms for use in the patterns to follow:

"Starting Hand" - The two (2) cards underneath the scratch-off coating marked "YOUR 2 CARDS," or underneath the Scratch-off coating marked "THEIR 2 CARDS".

"Table" - Any of the five (5) play areas on each ticket.

"Board" - The five (5) cards underneath the scratch-off coating marked "COMMUNITY CARDS".

"Suit" - The Spades, Hearts, Diamonds and Clubs are the four (4) Suits.

"Suited" - Any amount of cards where each card is of the same Suit (for example, 4 of Hearts + 5 of Hearts).

"Non-suited" - Any amount of cards where at least one is of a different suit (for example, 4 of Hearts + 5 of Spades).

"Sequential" - Any amount of cards that are connected (for example, 10 of Hearts; Jack of Hearts; Queen of Diamonds; King of Clubs; Ace of Spades).

"Non-Sequential" - Any amount of cards that are not connected (for example, Ace of Hearts + Queen of Diamonds).

"Pair" - Two (2) cards of the exact same rank (for example, Ace of Diamonds + Ace of Spades or 7 of Hearts + 7 of Clubs).

"Three of a Kind" - Three (3) cards of the exact same rank.

"Straight" - Five (5) non-suited cards in sequential order (for example, 2 of Clubs; 3 of Hearts; 4 of Diamonds; 5 of Spades; 6 of Diamonds).

"Flush" - Five (5) non-sequential cards of the same suit (for example, 2 of Diamonds; 4 of Diamonds; 5 of Diamonds; Jack of Diamonds; King of Diamonds).

"Full House" - Three (3) of a kind with a pair (for example, 4 of Diamonds; 4 of Clubs; 4 of Spades; 9 of Hearts; 9 of Diamonds).

"Four of a Kind" - Four (4) cards of the exact same rank.

"Straight Flush" - Five (5) suited and sequential cards, EXCEPT the highest five (5) sequential cards.

"Royal Flush" - The highest five (5) suited and sequential cards (for example, 10 of Diamonds; Jack of Diamonds; Queen of Diamonds; King of Diamonds; Ace of Diamonds).

"Final Hand" - The highest ranking five-card hand that uses the two (2) cards in either STARTING HAND with the five (5) cards on the Board.

G. The Suit or Suits used in one of the Starting Hands will NEVER match any of the Suit or Suits in the other Starting Hand for that table.

H. In any table, the two (2) starting Hands will never be of the same rank (for example, Jack of Hearts + 10 of Hearts vs. Jack of Diamonds + 10 of Clubs or 4 of Clubs + 4 of Diamonds vs. 4 of Hearts + 4 of Spades).

I. Each and every Starting Hand (YOUR 2 CARDS or THEIR 2 CARDS) will come from one of the following groups:

A. Any Pair

B. Any Suited and Sequential two (2) cards

C. Any Non-Suited and Sequential or any Non-Suited and Non-Sequential Cards where BOTH cards are either a 10, Jack, Queen, King or Ace

J. No Board will ever contain a Straight, Flush, Full House, Four of a Kind, Straight Flush or Royal Flush.

K. No Board will ever contain four (4) cards of the same suit.

L. Every Straight or Straight Flush will use the card ranks below. An Ace will never be used in a Straight or Straight Flush.

2, 3, 4, 5, 6

3, 4, 5, 6, 7

4, 5, 6, 7, 8

5, 6, 7, 8, 9

6, 7, 8, 9, 10

7, 8, 9, 10, Jack

8, 9, 10, Jack, Queen

9, 10, Jack, Queen, King

M. A Straight will never appear in the same table with a Straight Flush or a Royal Flush.

2.3 Procedure for Claiming Prizes.

A. To claim a "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game prize of \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$250 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the

ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$50.00, \$75.00, \$100, \$250 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game prize of \$5,000 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 652. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 652 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	480,000	6.25
\$15	240,000	12.50
\$20	120,000	25.00
\$25	60,000	50.00
\$50	60,000	50.00
\$75	19,625	152.87
\$100	5,875	510.64
\$250	2,500	1,200.00
\$500	1,050	2,857.14
\$5,000	125	24,000.00
\$100,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.03. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 652 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 652, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200505531

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 30, 2005

North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3909). The selected consultant will perform technical and professional work to conduct a Truck Lane Pilot Study.

The consultant selected for this project is Wilbur Smith Associates, Inc., 4925 Greenville Avenue, Suite 915, Dallas, Texas 75206-4085. The maximum amount of this contract is \$184,200.

TRD-200505543
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 30, 2005

Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 22, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of Millennium Telcom, L.L.C., doing business as One Source Communications, for a State-Issued Certificate of Franchise Authority, Project Number 32065 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service area covers all of Tarrant County, all of Denton County and the southeast corner of Wise County with a linear extension of the western Tarrant County boundary to a point north five miles and then east to the intersection of the western edge of Denton County.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32065.

TRD-200505493
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2005

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 23, 2005, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101- 39.109. A summary of the application follows.

Docket Title and Number: Application of Absolute Energy, Incorporated for Retail Electric Provider (REP) certification, Docket Number 32066 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 16, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32066.

TRD-200505494
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2005

Notice of Petition Requesting Approval of Revised Deemed Savings Values for Air Conditioning Equipment

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on November 4, 2005, requesting approval of revised deemed savings values for air conditioning equipment.

Docket Style and Number: Petition by Frontier Associates to Revise the Existing Commission - Approved Deemed Savings Values for Air Conditioning Equipment; Project Number 32001.

The Application: Frontier Associates, LLC (the Petitioner) requested that the deemed savings values previously approved by the commission for certain air conditioning equipment be revised downward to reflect the impact of new federal efficiency standards for such equipment. Frontier Associates files this petition on behalf of a number of investor-owned utilities that serve as program administrators for commission-approved programs designed to meet the State's goal for energy efficiency.

Senate Bill 7 (1999 legislative session) established a goal for energy efficiency, which the commission is implementing through its Energy Efficiency Rule (P.U.C. Substantive Rule §25.181). Through the commission-approved standard offer programs, financial incentives or rebates are awarded to Energy Efficiency Services Providers who properly install air conditioning equipment that exceeds the efficiency standards established by this commission.

Under the commission's rules, the use of the deemed savings values provides an inexpensive alternative to "full measurement and verification" of the peak demand and energy usage impacts of energy efficiency measures. The application of deemed savings values is justified in situations where the same measure will yield similar savings when installed in a wide variety of different settings, and in situations where more extensive measurement and verification activities would prove cost prohibitive. Nearly all of the measures that have been implemented through the Residential and Small Commercial Standard Offer Program Template and the Hard-to-Reach Standard Offer Program Template have used the commission-approved deemed savings values.

In 2001, this commission approved certain deemed savings values for air conditioning equipment. These values appear in P.U.C. Substantive Rule §25.184(d)(1), Figure: 16 TAC §25.184(d)(1). These values are estimates of the typical energy savings and demand reduction that might be expected from the installation of various types of high efficiency air conditioning equipment throughout Texas.

Beginning in January 2006, manufacturers of air conditioning equipment in the U.S. will no longer be able to manufacture 5.4 ton or less central air conditioners or heat pumps with a seasonal energy efficiency rating of less than 13. Heat pumps must meet a minimum heating seasonal performance factor of 7.7. This U.S. Department of Energy rule will have the effect of increasing the efficiency of equipment available on the market.

Because of this new federal efficiency standard, the new values proposed by Frontier are significantly lower than the values previously approved by the commission. Further, the rationale for a separate hard-to-reach central air conditioning system baseline no longer applies, so petitioners requested elimination of the air conditioning deemed savings for hard-to-reach program participants.

Persons wishing to comment or intervene in this proceeding should contact the Public Utility Commission of Texas, no later than Friday, December 23, 2005. The commission's address is P.O. Box 13326, Austin, Texas 78711-3326. Commission phone numbers are (512) 936-7120 or toll-free 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Project Number 32001.

TRD-200505539

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 30, 2005

Texas Residential Construction Commission

Notice of Application for Registration as Approved Third-Party Warranty Company

The Texas Residential Construction Commission adopted rules regarding the approval and registration of third-party warranty companies at 10 TAC §§303.250 - 303.266. The new rules were adopted pursuant to under new Chapter 430, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that builders may elect to provide warranties through third-party warranty companies approved by the commission. The commission rules for approval and registration of third-party warranty companies can be found on the commission's website at www.trcc.state.tx.us

Title 10 Texas Administrative Code §303.255 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. Approved third-party warranty companies will be listed on the commission's website.

Pursuant to 10 TAC §303.255 the commission hereby notices the application of:

StrucSure Home Warranty, LLC, 11 W. Hampden Avenue, Suite 201, Englewood, Colorado 80110. The applicant has identified Gerald M. Thompson, 11 W. Hampden Avenue, Suite 201, Englewood, Colorado

80110, as its registered agent. This is the applicant's second application; the previous application was denied.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200505495

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: November 28, 2005

Supreme Court of Texas

Amendments to Rule 13 of the Texas Rules of Judicial Administration

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9200

AMENDMENTS TO RULE 13 OF THE TEXAS RULES OF JUDICIAL ADMINISTRATION

ORDERED that:

1. Rule 13.1 of the Texas Rules of Judicial Administration is amended as follows.
2. Rule 13.11 of the Texas Rules of Judicial Administration is added as follows.
3. These changes in Rule 13 are effective November 29, 2005, as necessitated by Act of May 16, 2005, 79th Leg., R.S., ch. 97, 2005 Tex. Gen. Laws 169.
4. These amendments may be changed in response to comments received before April 1, 2006. Any interested party may submit comments in writing as follows:

by mail to: Mr. Jody Hughes

Rules Attorney

The Supreme Court of Texas

P.O. Box 12248

Austin TX 78711

by fax to: 512-463-1365 - Attn: Rules Attorney

by email to: Jody.Hughes@courts.state.tx.us

5. The Clerk is directed to:

- a. publish a copy of this Order on the Court's internet website at www.courts.state.tx.us;
- b. file a copy of this Order with the Secretary of State;
- c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- d. send a copy of this Order to each member of the Legislature; and
- e. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 29th day of November, 2005.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice
Harriet O'Neill, Justice
J. Dale Wainwright, Justice
Scott Brister, Justice
David M. Medina, Justice
Paul W. Green, Justice
Phil Johnson, Justice
Don R. Willett, Justice

RJA 13.1 should be amended as follows:

13.1 Authority and Applicability.

(a) *Authority.* This rule is promulgated under sections 74.161-.164 of the Texas Government Code and chapter 90 of the Texas Civil Practices and Remedies Code.

(b) *Applicability.* This rule applies to:

(1) civil actions that involve one or more common questions of fact and that were filed in a constitutional county court, county court at law, probate court, or district court on or after September 1, 2003;

(2) civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries, to the extent permitted by chapter 90 of the Texas Civil Practice and Remedies Code.

(c) *Other Cases.* Cases filed before that date to which this rule does not apply are governed by Rule 11 of these rules.

Comment - 2005

Subsections (a) and (b) are amended and subsection (c) is added to provide procedures for cases covered by chapter 90 of the Texas Civil Practices and Remedies Code, enacted effective September 1, 2005.

RJA 13.11 should be added as follows:

13.11 Civil Actions Filed Before September 1, 2003, Involving Claims for Asbestos- and Silica-Related Injuries.

(a) *Applicability.* To the extent permitted by chapter 90 of the Texas Civil Practice and Remedies Code, Rule 13.11 applies to civil actions filed before September 1, 2003, that involve claims for asbestos- or silica-related injuries.

(b) *Statutory References; Definitions.* Statutory references in Rule 13.11 are to chapter 90 of the Texas Civil Practice and Remedies Code. "Claimant" has the meaning assigned in section 90.001(6). "Report" has the meaning assigned in section 90.001(24).

(c) *Notice of Transfer Under Section 90.010(b).* A notice of transfer under section 90.010(b) must be filed in the trial court and the pretrial court and must:

- (1) be titled "Notice of Transfer Under Section 90.010(b)";
- (2) list all parties who have appeared and remain in the case, and the names, addresses, phone numbers, and bar numbers of their attorneys or, if a party is pro se, the party's name, address and phone number;
- (3) state the name of each claimant transferred;
- (4) attach to the notice filed in the pretrial court a copy of the claimant's live petition; and
- (5) if filed by a defendant, contain a certificate stating that the filing party conferred, or at least made a reasonable attempt to confer, with opposing counsel about whether the notice of transfer is appropriate as to each individual claimant transferred.

(d) *Effect on Pending Motion for Severance.* If, when a notice of transfer is filed in the trial court, a motion for severance has been filed but the trial court has not ruled, the trial court must rule on the motion within 14 days of the date the notice of transfer is filed, or the motion is deemed granted by operation of law.

(e) *When Transfer Effective.* A case is deemed transferred from the trial court to the pretrial court when a notice of transfer is filed with the trial court unless a motion for severance is pending. If a motion for severance is pending when a notice of transfer is filed with the trial court, a case is deemed transferred when the trial court rules on the motion or the motion is deemed granted by operation of law.

(f) *Further Action in Trial Court Limited.* After a notice of transfer is filed, the trial court must take no further action in the case except:

(1) to rule on a motion for severance pending when the notice of transfer was filed, or

(2) for good cause stated in the order in which such action is taken and after conferring with the pretrial court.

But service of any process already issued by the trial court may be completed and the return filed in the pretrial court.

(g) *Severed Case File.* If a claim is severed from a case that includes one or more claimants covered by section 90.010(a), the file for the severed claims in the trial court should be numerically linked to the original case file and should contain only the live petition containing the severed claim. The severed case file is deemed to include all papers in the original case file. The pretrial court may require a different procedure in the interests of justice and efficiency.

(h) *Transfer of Files.* The pretrial court may order the trial court clerk to transfer a case file to the pretrial court. A case file must not be transferred to the pretrial court except as ordered by that court.

(i) *Filing Fees and Costs.* A defendant who files a notice of transfer must pay the cost of filing the case in the pretrial court, including filing fees and other reasonable costs. If the pretrial court remands the case to the trial court, the pretrial court may order that costs be allocated between the parties in a way that encourages just and efficient compliance with this rule, and may award appropriate and reasonable attorney fees.

Comment - 2005

1. Rule 13.11 is added to provide procedures for cases covered by chapter 90 of the Texas Civil Practice and Remedies Code, enacted effective September 1, 2005.

2. The rule does not require a statement in the notice of transfer that no report has been served under chapter 90, or that a report has been served but does not comply with the provisions of that statute. The omission of such a requirement in the notice of transfer is not intended to limit the pretrial court's authority under Rule 166 of the Texas Rules of Civil Procedure to employ appropriate procedures to ascertain a party's position on the issue.

3. It is anticipated that the party filing a notice of transfer will usually be a defendant, and that the party filing a motion for severance will usually be a claimant. Ordinarily, a party filing the notice of transfer is responsible for filing fees and costs in the pretrial court, although there may be exceptions. See Rule 13.5(d). Also, a party who successfully moves to sever a claim into a separate proceeding in the trial court is customarily responsible for filing fees and costs, although severance is "on such terms as are just", Tex. R. Civ. P. 41, and again, there may be exceptions. The intent of this rule is that severance and transfer procedures minimize costs and burdens on parties and the courts.

4. A pretrial court has discretion under Rule 13.11(g)-(i) to order the maintenance and transfer of physical case files and to allocate costs and fees so as to minimize costs and burdens on parties and the courts.

TRD-200505511

Andrew Weber

Clerk

Supreme Court of Texas

Filed: November 29, 2005

◆ ◆ ◆
Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Government Code, §825.108 requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15th of each year containing the following information:

(1) the retirement system's fiscal transactions for the preceding fiscal year;

(2) the amount of the system's accumulated cash and securities; and

(3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108 of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by statute:



Statement of Fiduciary Net Assets

AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

	FIDUCIARY FUND TYPES		
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan	Health Benefits Trust Fund Supplemental Compensation
ASSETS			
Cash:			
Cash in State Treasury	\$ 736,443,670	\$ 423,854,544	\$
Cash in Bank	21,729,845		
Cash on Hand	14,005,691	16,790	
TOTAL CASH	\$ 772,179,206	\$ 423,871,334	\$ -0-
Legislative Appropriations	\$	\$	\$ 3,674,845
Receivables:			
Sale of Investments	\$ 1,879,939,816	\$	\$
Interest and Dividends	326,168,231	1,265,913	
Member and Retiree	57,867,714	29,052,122	
Reporting Entities	14,601,846	3,689,635	
Other	370,465	1,000,000	
Due from State's General Revenue Fund			
Due from Employees Retirement System of Texas	543,478		
TOTAL RECEIVABLES	\$ 2,279,491,550	\$ 35,007,670	\$ -0-
Investments			
Short-Term	\$ 1,920,797,091	\$	\$
Equities	63,571,059,647		
Fixed Income	24,723,145,049		
Alternative Investments	3,113,691,922		
TOTAL INVESTMENTS	\$ 93,328,693,709	\$ -0-	\$ -0-
Invested Securities Lending Collateral	\$ 10,413,778,492	\$	\$
Capital Assets			
Land	\$ 1,658,310	\$	\$
Building, Capital Projects and Equipment, at Cost, Net of Accumulated Depreciation	29,503,253		
TOTAL CAPITAL ASSETS	\$ 31,161,563	\$ -0-	\$ -0-
TOTAL ASSETS	\$ 106,825,304,520	\$ 458,879,004	\$ 3,674,845

FIDUCIARY FUND TYPES		TOTALS	
Agency Funds		2005	2004
\$	575	\$ 1,160,298,789	\$ 1,123,107,893
		21,729,845	11,734,631
		14,022,481	7,103,198
\$	575	\$ 1,196,051,115	\$ 1,141,945,722
\$		\$ 3,674,845	\$ 7,836,182
\$		\$ 1,879,939,816	\$ 1,121,927,507
		327,434,144	267,800,741
		86,919,836	99,520,129
11,526,020		29,817,501	29,126,407
		1,370,465	2,058,589
			5,917,334
		543,478	524,267
\$	11,526,020	\$ 2,326,025,240	\$ 1,526,874,974
\$		\$ 1,920,797,091	\$ 3,027,270,138
		63,571,059,647	55,835,694,440
		24,723,145,049	23,069,878,184
		3,113,691,922	2,478,290,579
\$	-0-	\$ 93,328,693,709	\$ 84,411,133,341
\$		\$ 10,413,778,492	\$ 10,829,078,240
\$		\$ 1,658,310	\$ 1,658,310
		29,503,253	29,721,218
\$	-0-	\$ 31,161,563	\$ 31,379,528
\$	11,526,595	\$ 107,299,384,964	\$ 97,948,247,987

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Statement of Fiduciary Net Assets

AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)
(concluded)

Exhibit



	FIDUCIARY FUND TYPES		
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan	Health Benefits Trust Fund Supplemental Compensation
LIABILITIES			
Accounts Payable	\$ 4,622,324	\$ 15,704,233	\$ 3,674,845
Accounts Payable-General Revenue Fund	38,913,267	1,034,737	
Benefits Payable	443,062,864		
Health Care Claims Payable		114,939,302	
Reinstatement Installment Receipts	38,537,192		
Investments Purchased Payable	2,172,135,908		
Securities Lending Collateral	10,413,778,492		
Due to Employees Retirement System of Texas	4,064,655		
Compensable Absences Payable	2,373,725	43,863	
Funds Held for Others			
TOTAL LIABILITIES	\$ 13,117,488,427	\$ 131,722,135	\$ 3,674,845
NET ASSETS HELD IN TRUST FOR PENSION BENEFITS AND OTHER PURPOSES	\$ 93,707,816,093	\$ 327,156,869	\$ -0-

FIDUCIARY FUND TYPES		TOTALS	
Agency Funds	2005	2004	
\$	\$ 24,001,402	\$ 24,336,795	
11,526,020	51,474,024	10,420,066	
	443,062,864	511,716,180	
	114,939,302	110,000,000	
	38,537,192	32,130,935	
	2,172,135,908	1,983,555,284	
	10,413,778,492	10,829,078,240	
	4,064,655	3,364,305	
	2,417,588	2,378,541	
575	575	775	
\$ 11,526,595	\$ 13,264,412,002	\$ 13,506,981,121	
\$ -0-	\$ 94,034,972,962	\$ 84,441,266,866	

Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)



	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan	Health Benefits Trust Fund Supplemental Compensation
ADDITIONS:			
Contributions:			
Member	\$ 1,578,339,475	\$ 101,198,783	\$
State	1,257,671,695	266,569,733	
Reporting Entities	221,158,942	80,914,228	
Health Care Premiums		322,780,191	
TOTAL CONTRIBUTIONS	\$ 3,057,170,112	\$ 771,462,935	\$ -0-
Investment Income:			
From Investing Activities:			
Net Appreciation in Fair Value of Investments	\$ 9,607,205,397	\$	\$
Interest	1,056,392,052	11,258,874	
Dividends	1,273,580,628		
TOTAL INVESTING ACTIVITIES INCOME	\$ 11,937,178,077	\$ 11,258,874	\$ -0-
Less Investing Activity Expenses	(17,394,917)		
NET INCOME FROM INVESTING ACTIVITIES	\$ 11,919,783,160	\$ 11,258,874	\$ -0-
From Securities Lending Activities:			
Securities Lending Income	\$ 317,892,484	\$	\$
Securities Lending Expenses:			
Borrower Rebates	(279,035,440)		
Management Fees	(5,815,617)		
Net Income from Securities Lending Activities	\$ 33,041,427	\$ -0-	\$ -0-
TOTAL NET INVESTMENT INCOME	\$ 11,952,824,587	\$ 11,258,874	\$ -0-
Other Additions:			
Reinstatement of Contribution Refunds	\$ 96,692,115	\$	\$
Reinstatement Fees	53,302,228		
Transfer from TRS-ActiveCare Enterprise Fund			
Legislative Appropriations for Supplemental Compensation			268,632,358
Legislative Appropriations for Excess Benefits	926,187		
Miscellaneous Revenues	21,315		
On Behalf Fringe Benefits Paid by the State		41,994	
TOTAL OTHER ADDITIONS	\$ 150,941,845	\$ 41,994	\$ 268,632,358
TOTAL ADDITIONS	\$ 15,160,936,544	\$ 782,763,803	\$ 268,632,358

TOTALS

2005	2004
------	------

\$ 1,679,538,258	\$ 1,629,573,847
1,524,241,428	1,696,580,824
302,073,170	271,853,059
322,780,191	248,552,679
\$ 3,828,633,047	\$ 3,846,560,409

\$ 9,607,205,397	\$ 7,024,439,015
1,067,650,926	1,108,585,917
1,273,580,628	1,005,620,107

\$ 11,948,436,951	\$ 9,138,645,039
(17,394,917)	(16,252,645)

\$ 11,931,042,034	\$ 9,122,392,394
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\$ 317,892,484	\$ 139,932,948
(279,035,440)	(106,672,932)
(5,815,617)	(4,989,370)

\$ 33,041,427	\$ 28,270,646
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\$ 11,964,083,461	\$ 9,150,663,040
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\$ 96,692,115	\$ 124,360,457
53,302,228	66,867,238
	42,000,000
268,632,358	281,149,405
926,187	516,529
21,315	1,909
41,994	45,626

\$ 419,616,197	\$ 514,941,164
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\$ 16,212,332,705	\$ 13,512,164,613
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Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)
(concluded)

Exhibit



	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan	Health Benefits Trust Fund Supplemental Compensation
DEDUCTIONS:			
Benefits	\$ 5,386,679,241	\$	\$
Refunds of Contributions	243,382,014		
Health Care Claims		660,559,083	
Health Care Claims Processing		31,262,147	
Administrative Expenses (Net of Investing Activity Expenses)	25,114,716	2,070,863	(15,233)
Supplemental Health Care Compensation			268,647,591
Excess Benefits	926,187		
TOTAL DEDUCTIONS	\$ 5,656,102,158	\$ 693,892,093	\$ 268,632,358
Net Increase	\$ 9,504,834,386	\$ 88,871,710	\$ -0-
NET ASSETS HELD IN TRUST FOR PENSION BENEFITS AND OTHER PURPOSES - BEGINNING OF YEAR	\$ 84,202,981,707	\$ 238,285,159	\$ -0-
NET ASSETS HELD IN TRUST FOR PENSION BENEFITS AND OTHER PURPOSES - END OF YEAR	\$ 93,707,816,093	\$ 327,156,869	\$ -0-

TOTALS

2005	2004
\$ 5,386,679,241	\$ 5,486,333,169
243,382,014	220,396,709
660,559,083	581,354,957
31,262,147	23,914,851
27,170,346	27,715,652
268,647,591	280,700,855
926,187	516,529
<u>\$ 6,618,626,609</u>	<u>\$ 6,620,932,722</u>
<u>\$ 9,593,706,096</u>	<u>\$ 6,891,231,891</u>
<u>\$ 84,441,266,866</u>	<u>\$ 77,550,034,975</u>
<u><u>\$ 94,034,972,962</u></u>	<u><u>\$ 84,441,266,866</u></u>

Statement of Net Assets

PROPRIETARY FUND

AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

Exhibit



	TRS-Active Care Enterprise Fund	
	2005	2004
ASSETS		
Current Assets:		
Cash:		
Cash in State Treasury	\$ 358,436,099	\$ 274,814,166
Cash on Hand	65,445	
TOTAL CASH	\$ 358,501,544	\$ 274,814,166
Accounts Receivable:		
Investment Interest	\$ 1,047,813	\$ 345,182
Health Care Premiums	33,807,076	36,760,143
TOTAL ACCOUNTS RECEIVABLE	\$ 34,854,889	\$ 37,105,325
TOTAL ASSETS	\$ 393,356,433	\$ 311,919,491
LIABILITIES		
Current Liabilities:		
Accounts Payable	\$ 350,466	\$ 309,857
Premiums Payable to HMOs	3,467,754	3,247,534
Health Care Claims Payable	77,473,516	67,948,003
Compensable Absences Payable	72,862	42,793
TOTAL LIABILITIES	\$ 81,364,598	\$ 71,548,187
NET ASSETS		
Unrestricted	\$ 311,991,835	\$ 240,371,304
TOTAL NET ASSETS	\$ 311,991,835	\$ 240,371,304

Statement of Revenues, Expenses and Changes in Fund Net Assets

PROPRIETARY FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

Exhibit



	TRS-ActiveCare Enterprise Fund	
	2005	2004
OPERATING REVENUES:		
Health Care Premiums	\$ 823,726,341	\$ 758,062,552
Administrative Fees	183,317	192,763
TOTAL OPERATING REVENUES	\$ 823,909,658	\$ 758,255,315
OPERATING EXPENSES:		
Health Care Claims	\$ 663,361,138	\$ 520,998,423
Health Care Claims Processing	53,697,572	53,564,510
Premium Payments to HMOs	42,574,641	40,210,539
Administrative Expenses	1,607,113	918,619
TOTAL OPERATING EXPENSES	\$ 761,240,464	\$ 615,692,091
OPERATING INCOME	\$ 62,669,194	\$ 142,563,224
NONOPERATING REVENUES:		
Investment Income	\$ 8,915,711	\$ 3,641,100
On Behalf Fringe Benefits Paid by the State	35,626	24,050
TOTAL NONOPERATING REVENUES	\$ 8,951,337	\$ 3,665,150
Income Before Transfers	\$ 71,620,531	\$ 146,228,374
TRANSFERS:		
Legislative Appropriations Transfer to Retired Plan	\$	\$ (42,000,000)
Change in Net Assets	\$ 71,620,531	\$ 104,228,374
TOTAL NET ASSETS - BEGINNING	\$ 240,371,304	\$ 136,421,779
Restatement		(278,849)
Beginning of Year, as Restated	\$ 240,371,304	\$ 136,142,930
TOTAL NET ASSETS - ENDING	\$ 311,991,835	\$ 240,371,304



Statement of Cash Flows

PROPRIETARY FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

	TRS-ActiveCare Enterprise Fund	
	2005	2004
CASH FLOWS FROM OPERATING ACTIVITIES:		
Receipts from Health Care Premiums	\$ 826,726,400	\$ 741,359,850
Receipts from Long-term Care Administrative Fees	183,317	192,763
Payments for Administrative Expenses	(1,469,054)	(1,293,903)
Payments for Health Care Claims	(653,869,283)	(544,333,788)
Payments for Health Care Processing	(53,742,660)	(53,314,362)
Payments for HMO Premiums	(42,354,422)	(36,963,005)
NET CASH PROVIDED BY OPERATING ACTIVITIES	\$ 75,474,298	\$ 105,647,555
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:		
Legislative Appropriations Transfer to Retired Plan	\$	\$ (42,000,000)
NET CASH PROVIDED BY NONCAPITAL FINANCING ACTIVITIES	\$	\$ (42,000,000)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Interest Received	\$ 8,213,080	\$ 3,295,897
NET CASH PROVIDED BY INVESTING ACTIVITIES	\$ 8,213,080	\$ 3,295,897
Net Increase in Cash	\$ 83,687,378	\$ 66,943,452
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	\$ 274,814,166	\$ 208,149,542
Restatement to Beginning Cash and Cash Equivalents	\$	\$ (278,828)
Cash and Cash Equivalents - September 1 Restated	\$ 274,814,166	\$ 207,870,714
CASH AND CASH EQUIVALENTS - AUGUST 31	\$ 358,501,544	\$ 274,814,166
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income	\$ 62,669,194	\$ 142,563,224
Adjustments to Reconcile Operating Income to Net Cash Provided (Used) by Operating Activities:		
Decrease (Increase) in Health Care Premiums Receivable	\$ 2,953,067	\$ (16,906,719)
Increase in Premiums Payable to HMOs	220,220	3,247,534
Increase (Decrease) in Health Care Claims Payable	9,525,513	(22,900,898)
Increase (Decrease) in Accounts Payable	40,609	(375,045)
Increase (Decrease) in Compensable Absences Payable	30,069	(4,591)
On Behalf Fringe Benefits Paid by the State	35,626	24,050
Total Adjustments	\$ 12,805,104	\$ (36,915,669)
Net Cash Provided by Operating Activities	\$ 75,474,298	\$ 105,647,555

Balance Sheet

GOVERNMENTAL FUND

AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

Exhibit



	403(b) Certification Program Special Revenue Fund	
	2005	2004
ASSETS		
Current Assets:		
Cash in State Treasury	\$ 209,167	\$ 217,967
Accounts Receivable	596	267
TOTAL ASSETS	\$ 209,763	\$ 218,234
LIABILITIES AND FUND BALANCE:		
Liabilities		
Current Liabilities:		
Accounts Payable	\$ 2,000	\$ 2,000
Fund Balance Reserved for:		
Administrative Expenditures	\$ 207,763	\$ 216,234
TOTAL LIABILITIES AND FUND BALANCE	\$ 209,763	\$ 218,234

Statement of Revenues, Expenditures and Changes in Fund Balance

GOVERNMENTAL FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

Exhibit



	403(b) Certification Program Special Revenue Fund	
	2005	2004
REVENUES:		
Certification Fees	\$ 10,000	\$ 15,000
Investment Income	5,529	3,495
TOTAL REVENUES	\$ 15,529	\$ 18,495
EXPENDITURES:		
Administrative Expenditures	\$ 24,000	\$ 24,000
TOTAL EXPENDITURES	\$ 24,000	\$ 24,000
Deficiency of Revenues under Expenditures	\$ (8,471)	\$ (5,505)
FUND BALANCE - BEGINNING	\$ 216,234	\$ 221,739
FUND BALANCE - ENDING	\$ 207,763	\$ 216,234

Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

AUGUST 31, 2005

Exhibit



	Balances September 1, 2004	Additions	Deductions	Balances August 31, 2005
UNAPPROPRIATED RECEIPTS				
Collections on Behalf of the State's General Revenue Fund				
Assets:				
Cash in State Treasury	\$	\$186,829,115	\$186,829,115	\$
Accounts Receivable - Reporting Entities	10,420,066	11,526,020	10,420,066	11,526,020
TOTAL ASSETS	\$10,420,066	\$198,355,135	\$197,249,181	\$11,526,020
Liabilities:				
Accounts Payable - General Revenue Fund	\$10,420,066	\$ 11,526,020	\$ 10,420,066	\$11,526,020
OTHER AGENCY FUNDS				
Employees' Savings Bond Account				
Assets:				
Cash in State Treasury	\$ 775	\$ 8,775	\$ 8,975	\$ 575
Liabilities:				
Funds Held for Others	\$ 775	\$ 8,700	\$ 8,900	\$ 575
TOTALS - ALL AGENCY FUNDS				
				(Exhibit I)
Assets:				
Cash in State Treasury	\$ 775	\$186,837,890	\$186,838,090	\$ 575
Accounts Receivable - Reporting Entities	10,420,066	11,526,020	10,420,066	11,526,020
TOTAL ASSETS	\$10,420,841	\$198,363,910	\$197,258,156	\$11,526,595
Liabilities:				
Accounts Payable - General Revenue Fund	\$10,420,066	\$ 11,526,020	\$ 10,420,066	\$11,526,020
Funds Held for Others	775	8,700	8,900	575
TOTAL LIABILITIES	\$10,420,841	\$ 11,534,720	\$ 10,428,966	\$11,526,595

Rate of Return on Assets

YEAR ENDED AUGUST 31, 2005

Exhibit



	Pension Trust Fund	Health Care Plans and 403(b) Program
CASH AND SHORT-TERM INVESTMENTS	2.53%	2.92%
LONG-TERM INVESTMENTS*		
Equities	18.35%	
Fixed Income	4.78%	
Alternative Investments	28.02%	

*Rates for Long-Term Investments include appreciation in market values.



GABRIEL, ROEDER, SMITH & COMPANY

Consultants & Actuaries

5605 N. MacArthur Blvd. • Suite 870 • Irving, Texas 75038-2631 • 469-524-0000 • fax 469-524-0003

November 4, 2005

BOARD OF TRUSTEES

Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2005

We certify that the information included herein and contained in the 2005 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2005.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Carter and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law and are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2005, the System's under-funded status has increased because of the continued recognition of the investment results during the poor investment market of fiscal years 2001 & 2002, and the UAAL is now \$13.2 billion.

This valuation shows a normal cost equal to 10.40% of pay. Since the State contribution rate of 6.00% of pay plus the member contribution rate of 6.40% of pay total 12.40% of pay, there is 2.00% of pay available to amortize the UAAL. However, the contributions provided by this portion of the contribution rate are not sufficient to amortize the current unfunded actuarial accrued liabilities of the System. Therefore the funding period corresponding to the 6.00% State contribution rate is "never" or infinite, which is greater than the statutory limit of 31 years.

The actuarial valuation report as of August 31, 2005 reveals that while the System has an unfunded liability, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 87.1%. In addition, the System is now deferring a net asset gain from prior asset experience. Therefore, in the absence of actuarial losses in the future, the funded status of the System should improve as these deferred asset gains are recognized.

Even though the System earned a 14.4% return on a market value of assets basis for the plan year ending August 31, 2005, the System experienced a \$4.1 billion loss on the actuarial value of assets due to the recognition of prior investment losses. However, the System has now moved into a position where the actuarial value of assets is less than the market value, as a result of deferred net asset gains. As long as there are no offsetting asset losses over the next few years, the System is expected to recognize \$4.4 billion in asset gains. The recognition of these asset gains and the change in the benefit provisions enacted by the legislature during the last session could put the System back into an actuarial position that would produce a more reasonable funding period.

In the absence of significant actuarial losses over the near term, the contribution rate needed to amortize the UAAL will begin to decrease. If the System can earn 8% over the next four years, the required contribution rate is forecasted to flatten out between 6.00% and 6.20%. This current contribution rate may still be lower than the amount needed to fund the normal cost and amortize the UAAL over the 30-year period called for by GASB Statement No. 25, but it would at least produce a determinable funding period and put the System in a position where one or two years of above average investment returns (9%-10%) could lower the GASB ARC to below the statutory 6.0% contribution rate.

Even though the future outlook has improved significantly since the prior valuation, caution is still warranted over the next few years. There should be no benefit increases passed by the Legislature over the next several Legislative Sessions without adequate funding, and the funded status should be carefully monitored.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 20 of the valuation report. This valuation reflects the changes to plan provisions as enacted by the 79th Texas Legislature.

Legislation was adopted by the legislature since the prior valuation. This legislation changed the benefit provisions as follows:

1. Non-grandfathered members will be subject to the following new law changes effective September 1, 2005:
 - (i) final average salary at retirement will be determined by the highest five years (instead of three years) of salary,
 - (ii) subsidized early retirement for members at least age 55 and with at least 20 years of service will be eliminated, and
 - (iii) the partial lump sum option eligibility will require a combined age plus years of creditable service that equals at least 90 ("Rule of 90").
2. If a member meets any one of the following criteria on or before August 31, 2005, they are grandfathered (exempt) from the above changes:
 - (i) at least 50 years old, or
 - (ii) age and service credit equal at least 70 ("Rule of 70"), or
 - (iii) have at least 25 years of service credit.
3. Effective January 1, 2006, new members must pay the full actuarial cost for service purchases for out of state service.
4. New members who enter TRS after August 31, 2007 are also affected by the following changes:
 - (i) minimum age 60 for unreduced retirement, and
 - (ii) reduced retirement at Rule of 80, benefit reduced 5% a year from age 60.

Disclosure of Pension Information

Effective for the fiscal year ending August 31, 1996, the Board of Trustees has adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 21 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2003 and were adopted on May 21, 2004.

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

GABRIEL, ROEDER, SMITH & COMPANY

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

Data

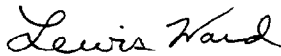
In preparing the August 31, 2005 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data. In conjunction with the actuarial audit performed since the prior valuation, certain miscellaneous changes were made in the handling of member records with missing data. However, none of these changes had any material impact on the actuarial results.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company



W. Michael Carter, FSA, EA, MAAA
Senior Consultant



Lewis Ward
Consultant



Joe Newton, FSA, EA, MAAA
Consultant

GABRIEL, ROEDER, SMITH & COMPANY

Actuarial Present Value of Future Benefits

ACTUARIAL VALUATION - AUGUST 31, 2005 (With Comparative Totals for August 31, 2004)

	2005	2004
Present Value of Benefits Presently Being Paid:		
Service Retirement Benefits	\$ 45,632,663,024	\$ 43,990,300,273
Disability Retirement Benefits	857,293,775	852,998,580
Death Benefits	731,194,195	765,767,599
Present Survivor Benefits	189,276,295	187,208,198
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	\$ 47,410,427,289	\$ 45,796,274,650
Present Value of Benefits Payable in the Future to Present Active Members:		
Service Retirement Benefits	\$ 68,912,907,919	\$ 67,393,286,035
Disability Retirement Benefits	859,956,653	842,184,439
Termination Benefits	3,882,069,205	3,851,143,498
Death and Survivor Benefits	1,219,455,859	1,230,447,990
TOTAL ACTIVE MEMBER LIABILITIES	\$ 74,874,389,636	\$ 73,317,061,962
Present Value of Benefits Payable in the Future to Present Inactive Members:		
Inactive Vested Participants		
Retirement Benefits	\$ 1,063,354,511	\$ 1,070,395,666
Death Benefits	85,789,475	81,136,565
TOTAL INACTIVE VESTED BENEFITS	\$ 1,149,143,986	\$ 1,151,532,231
Refunds of Contributions to Inactive Non-vested Members	\$ 221,901,390	\$ 176,633,650
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 900,406,283	\$ 825,824,580
TOTAL INACTIVE LIABILITIES	\$ 2,271,451,659	\$ 2,153,990,461
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	\$ 124,556,268,584	\$ 121,267,327,073

Summary of Cost Items

	2005	2004
Actuarial Present Value of Future Benefits	\$ 124,556,268,584	\$ 121,267,327,073
Present Value of Future Normal Costs	(22,061,732,490)	(24,530,801,603)
Actuarial Accrued Liability	102,494,536,094	96,736,525,470
Actuarial Value of Assets	(89,298,813,225)	(88,783,870,893)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	\$ 13,195,722,869	\$ 7,952,654,577

TRD-200505530
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Filed: November 30, 2005

Texas A&M University, Board of Regents

Request for Proposals

The Texas A&M University System (A&M System) announces a Request for Proposals (RFP) to provide Flexible Spending Account Administrative Services and a Group Vision Insurance Plan. Firms are invited to submit proposals for one or both of the plans mentioned above. The RFP solicits proposals for plans beginning September 1, 2006.

Firms wishing to respond to this request must have superior, recognized expertise and specialize in administering benefit plans of the types listed above.

The deadline for receipt of proposals in response to this request is 4:00 p.m. CST on January 13, 2006.

The A&M System reserves the right to accept or reject any or all proposals submitted and is under no legal requirement to execute a resulting contract on the basis of this advertisement. The A&M System intends to use responses as a basis for further negotiations of specific project details and will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria. The A&M System shall not designate and will not pay commissions to an Agent of Record or a commissioned representative.

The RFP does not commit the A&M System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the A&M System to award a contract or to pay any costs incurred in the preparation of a response. The A&M System specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the A&M System deems it to be in its best interest.

Beginning December 9, 2005, RFP instructions providing detailed information regarding the project can be downloaded from <http://sago.tamu.edu/shro/rfp2.asp> or written requests can be faxed to Ms. Ellen Gerescher, System Human Resource Office, The Texas A&M University System, FAX (979) 458-6190 (physical address: 200 Technology Way, Suite 1281, College Station, Texas 77845-3424). For questions or further information regarding this notice, contact Ms. Ellen Gerescher by facsimile or by email at egerescher@tamu.edu.

TRD-200505529
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: November 30, 2005

Texas A&M University System Health Science Center

Request for Qualifications

The Texas A&M University System Health Science Center (A&M System Health Science Center) is requesting responses from qualified firms for general consulting services to assist the HSC administration in the development of a faculty practice plan, including, but not limited to, the development of the plan's mission and scope, governance and administrative structure, billing and collections, funds flow and compensation,

and regulatory compliance. The successful firm will contract directly with the HSC and will work cooperatively with the HSC to successfully perform the services requested on an "as needed" basis, with a budget for total services not to exceed \$50,000.00. Therefore, the HSC has determined that the Request For Qualifications (RFQ) method of procurement will provide the best value to the institution.

The A&M System Health Science Center invites proposals in response to this Request for Qualifications (RFQ) from qualified firms for the provision of such an analysis (to begin January 13, 2006) under the direction and supervision of the A&M System Health Science Center Office of Finance and Administration.

The President of the A&M Health Science Center has affirmed the necessity of these consulting services for assistance in this analysis.

Description: A qualified firm will:

Have demonstrated credentials, capabilities, and experience in the same or similar services as those requested;

Inform A&M Health Science Center of scheduled activities through regular notice, i.e. email, about the schedule of events, locations, and opportunities for A&M Health Science Center involvement in the assessment process;

Meet with A&M Health Science Center on a timeframe as deemed appropriate by both parties during the Project. The findings and data assembled for each work step will be presented to the A&M Health Science Center for discussion and review. This is to ensure that A&M Health Science Center is kept posted as to the findings from completed activities and the planned next steps and activities and their goals. The A&M Health Science Center shall provide guidance and input for the project activities;

Provide a detailed work plan to ensure that the project addresses the appropriate issues, avoids false starts, misdirected project activities, and wasted resources and time. The work plan will have clearly stated objectives and activities, the responsibilities of both the firm's project team members and A&M Health Science Center, and specific deliverables for each work task. A tentative schedule for completing the activities will be provided, highlighting key dates and deadlines to the extent possible. The schedule will be revised and updated as needed. The work plan and schedule are to serve as the basis for working with the A&M Health Science Center in establishing priorities and monitoring progress.

Assign and designate a qualified project manager and a sufficient amount of qualified and experienced staff and identify these personnel in the response, including information on their education, training, work history, and directly relevant experience. Contracted firm will promptly inform the A&M Health Science Center of any changes in personnel assigned to this Project. The contracted firm and all assigned personnel will remain fully committed to this project until completed or as otherwise terminated as determined by the A&M Health Science Center.

Responses: Interested firms should submit for consideration one original and four (4) copies of their response including the following information.

A statement of the firm's qualifications;

A list and description of related projects by the firm;

Thoughts on the approach the firm will use to address this project;

Information about the firm's principals, the services offered, the number and type of professional and other staff members, and business volume over the past five years;

Information for references - Listing of a minimum of three (3) separate and verifiable references for which the respondent has performed or is currently performing comparable work in the quality and scope of that specified in this RFQ. The listing must include (for each reference) company name, address, phone number, contact person; project title, size, term, performance period, and brief description of the work and deliverables provided.

Response should present all information in a clear and concise manner. All submissions should be clearly identified with the RFQ number and title.

Person to Contact: The response should be sent by mail or delivered in person, marked on the envelope "**Response to Request for Qualifications**" and addressed to:

The Texas A&M University System Health Science Center

Office of Finance and Administration

HUB & Procurement Services

John B. Connally Bldg

301 Tarrow Street, 6th Floor

College Station, Texas 77840-7896

Evaluation: Proposals sent in response to this RFQ will be evaluated in light of several criteria. The A&M Health Science Center selection committee will base its selection of a firm on demonstrated competence and qualifications to perform the services. The HSC selection committee members will consider the following factors, as a minimum, when evaluating the firms in developing the recommended order of best qualified: technical qualifications of members of the proposed team, experience of members of the team, past performance of members of the team with the A&M System component, if any, team members'/Firm's references, team members'/Firms experience in working with institutions of higher education where Federal and/or State funds are involved.

Deadline for submission of Response: All proposals must be received by the Office of Finance and Administration of the A&M System Health Science Center at the address set forth above not later than 5:00 p.m., December 20, 2005.

TRD-200505540

Robert C. Bounds

Sr. Procurement Officer

Texas A&M University System Health Science Center

Filed: November 30, 2005



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

Montgomery County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Montgomery County Lone Star Executive Airport. TxDOT CSJ No. 0612LSTAR. Scope: Prepare a Business Plan to provide an overview analysis of the airport, addressing airport policy, airport building standards, airport rates and charges, market analysis, financial analysis, and risk assessment; provide an assessment of business/economic development opportunities; recommend a five-year strategic course of action to pursue development and to address issues at the Lone Star Executive Airport, Conroe, Texas.

The HUB goal is set at 0%. TxDOT Project Manager is Chris Munroe.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT website, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Five completed, unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight January 9, 2006. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. January 10, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. January 10, 2006. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Edie Stimach. Electronic facsimiles or forms sent by e-mail will not be accepted.

The Consultant Selection Committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Chris Munroe, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200505496

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: November 29, 2005



Request for Proposal for Aviation Engineering Services - Big Spring McMahon-Wrinkle Airport

The City of Big Spring, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Big Spring, Big Spring McMahon-Wrinkle Airport, TxDOT CSJ No.:0608BGSPR. Scope: Provide engineer-

ing/design services to overlay and mark Runway 17-35 at the McMahon-Wrinkle Airport.

The DBE goal is set at 6%. TxDOT Project Manager is Ed Mayle.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selecting "Big Spring McMahon-Wrinkle Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight January 9, 2006 (CST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. January 10, 2006 (CST). Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. January 10, 2006 (CST). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Edie Stimach. Electronic facsimiles or forms sent by e-mail will not be accepted.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of a review of proposals. The committee will review all proposals, then rate and rank each one. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Ed Mayle, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200505471

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: November 23, 2005



University of Houston System

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, University of Houston System (UHS) furnishes this notice of request for proposal. The State of Texas has developed policies to encourage the use of Historically Underutilized Businesses (HUBS), and accordingly, UHS makes every effort to show good faith in the utilization of HUBS in the provision of contracts for commodities and services. UHS has established a goal of 30% of the total value of each program's service contracts to be awarded to qualified HUB. This can be achieved by contracting directly with HUBS or indirectly through sub-contracting opportunities. Each contractor shall exhibit a good faith effort to utilize HUBS as suppliers or sub-contractors, whenever possible.

University of Houston System seeks proposals to provide consulting services to assist in developing an appropriate and affordable total compensation market study. University of Houston System invites firms with demonstrated expertise, experience, and success in development of total compensation surveys to submit comprehensive responses to this request for proposal. Interested parties are invited to express their interest and describe their capabilities on or before January 9, 2006.

The term of the contract is to be for a four month period beginning on or about January 16, 2006 and ending May 16, 2006, subject to one renewal option of three months' duration. Further information can be obtained from Penny Honeycutt at (713) 203-6179. All proposals must be specific and must be responsive to the criteria set forth in this request.

Background

University of Houston System main campus installed a new compensation plan in 1997 and uses a point-factor system of classification (Wyatt). Since then, a number of exceptions have been made, new employees have been hired above the salaries of existing employees, and the number of job classifications has expanded significantly. Salary increase funds have been minimal in recent years, due to reduced state funding and the desire to keep tuition rates affordable for students. To recognize performance and/or retain staff, supervisors may have resorted to reclassification as a means to justify an increase (promotional or equity).

Project Objectives, Scope of Work and Deliverables

The firm chosen will be expected to provide resources for the following:

A. Development of a total compensation market survey that accurately measures the current market for comparable University of Houston (UH), University of Houston-Downtown (UHD) and University of Houston-Clear Lake (UHCL) benchmark jobs.

B. A database of the survey results that will enable future consistent, regular collection and analysis of total compensation competitive data.

C. A graduated bid for 150 jobs with additional benchmark jobs in increments of 25.

D. Total compensation is defined as base pay plus the value for health and welfare benefits and income protection benefits; plus the value of vacation, sick leave, retirement, longevity pay, hazard pay, shift differential, parking, jury duty, administrative leave, holiday leave, emergency leave, scholarship funding, and college study program. The individual value of each benefit must be listed separately in the final reporting database for future reference.

E. A rationale (policy line) used for the development and collection of market data from survey and comparisons to UHS benchmark jobs that can be carried forward and used for future surveys by UHS.

F. Data collection and analysis that defines how UHS total compensation package measures up against the competitive market.

G. A database of competitive job market data from resources that can be re-surveyed in the future, thus assuring consistency in survey reporting and data analysis in the future.

H. Recommendations for total compensation programs required to function effectively in the unique job markets as reflected in a variety of job families.

I. The final report must be provided in hard copy and soft copy and presented so that the positive results and areas for improvement are both outlined in enough detail that management can utilize the report in communicating back to the UH, UHDT, and UHCL communities.

UHS Will Provide

A. A list of benchmark jobs (at least 150), total compensation factors considered in the pricing of these jobs, and the recruiting areas for each.

B. Career ladders for benchmark jobs and the basic job profiles needed for job matching to conduct the survey.

C. Lists of commercially available market surveys and guidance in the design of the database solution, including specialty surveys designated by University of Houston, University of Houston-Downtown and University of Houston-Clear Lake such as the Oklahoma University salary survey and the CUPA salary survey.

D. Database configuration plan details sufficient to build the database in MS Access and PeopleSoft HR applications.

General Instructions

Submit one original, three paper copies of your proposal and a CD version (MS Word format) in a sealed envelope to: the Human Resources Department, University of Houston, 341 McElhinney Hall, Houston, Texas 77204-5009 before 5:00 PM, January 9, 2006. The original shall be prepared on a word processor and formatted in at least 12-point-font that is clearly readable. The paper copies shall be of good, readable quality.

Compliance with Request for Proposal (RFP) Requirements

By submission of a proposal, a submitter agrees to be bound by the requirements set forth in this RFP. University of Houston System, at its sole discretion, may disqualify a proposal from consideration if University of Houston System determines a proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

Signature and Certification of Submitter

The original paper proposal must be signed and dated by a representative of the submitter who is authorized to bind the submitter to the terms and conditions contained in this RFP and to comply with the information submitted in the proposal. Each submitter certifies to both the completeness, veracity, and accuracy of the information provided in the proposal, and the authority of the individual whose signature appears on the proposal to bind the submitter to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

Ownership of Proposals

All proposals become the physical property of University of Houston System upon receipt.

Use and Disclosure of Information

Submitters acknowledge that University of Houston System is an agency of the State of Texas and is, therefore, required to comply with

the Texas Public Information Act. If a proposal includes proprietary data, trade secrets, or information the submitter wishes to except from public disclosure, then the submitter must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL--PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the submitter as proprietary will be used by University of Houston System only for purposes related to or arising out of the evaluation of proposals, selection of a submitter pursuant to the RFP process, and negotiation and execution of a Contract, if any, with the submitter selected.

Rescission of Proposal

A proposal can be withdrawn from consideration at any time prior to expiration of the deadline for proposals pursuant to a written request sent to the Office of Human Resources, University of Houston System.

Request for Clarification

University of Houston System reserves the right to request clarification of any information contained in a proposal.

Addenda to the RFP

Each submitter will be provided with copies of University-approved addenda, including amendments, if any, to the RFP. If and as necessary, as determined by University of Houston System, submitters will, in turn, be allowed time to revise or supply additional information in response to such addenda.

Communications with University Personnel

There will not be a pre-proposal conference. Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing University business operations, submitters are expressly and absolutely prohibited from engaging in communications with University personnel who are involved in any manner in the review and/or evaluation of the proposals; selection of a submitter; and/or negotiations or formalization of a contract. If any submitter engages in conduct or communications that University of Houston System determines are contrary to the prohibitions set forth in this section, University of Houston System may, at its sole discretion, disqualify the submitter and withdraw the submitter's proposal from consideration.

Discussions with Submitters

University of Houston System may conduct discussions and/or negotiations with any submitter that appears to be eligible for award ("Eligible Submitter") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, University of Houston System will not disclose information derived from proposals submitted by competing submitters, except as and if law requires disclosure.

Selection of Proposer

The submitter selected for award will be the submitter whose proposal, as presented in response to this RFP and as determined by University of Houston System in accordance with the evaluation criteria set forth in this RFP, to be the most advantageous to University of Houston System. Submitters acknowledge that University of Houston System is not bound to accept the lowest-priced proposal.

Evaluation of Proposals

Submission of a proposal indicates the submitter's acceptance of the evaluation process set forth in this RFP and the submitter's acknowledgment that subjective judgments must be made by University of Houston System in regard to the evaluation process.

Criteria for Evaluation

Evaluation of proposals and award to the Selected Submitter will be based on the following factors, as weighted and listed as follows:

- (1) ten or more years of compensation consulting experience addressing best practices in the area of total compensation and salary administration,
- (2) completeness of responses to the above parameters (Scope of Work, Deliverables, Objectives). Respondents shall address each to include an estimate of effort and a time line,
- (3) three or more directly related references, including at least one from higher education. References shall include a point of contact and means thereof,
- (4) estimate of cost(s). These are to be broken down into deliverable components,
- (5) evidence statement regarding use of HUBS, and
- (6) University of Houston System may also consider other information it deems relevant to the selection of a consultant.

Consideration of Additional Information

University of Houston System reserves the right to ask for and consider any additional information deemed beneficial to University of Houston System in evaluation of the proposals.

Termination

This Request for Proposal in no manner obligates University of Houston System of Houston University to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of University of Houston System of Houston and may be terminated without penalty or obligation at any time prior to the signing of a contract. University of Houston System of Houston reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200505510

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston System

Filed: November 29, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).